TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 161.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, APPELLANT,

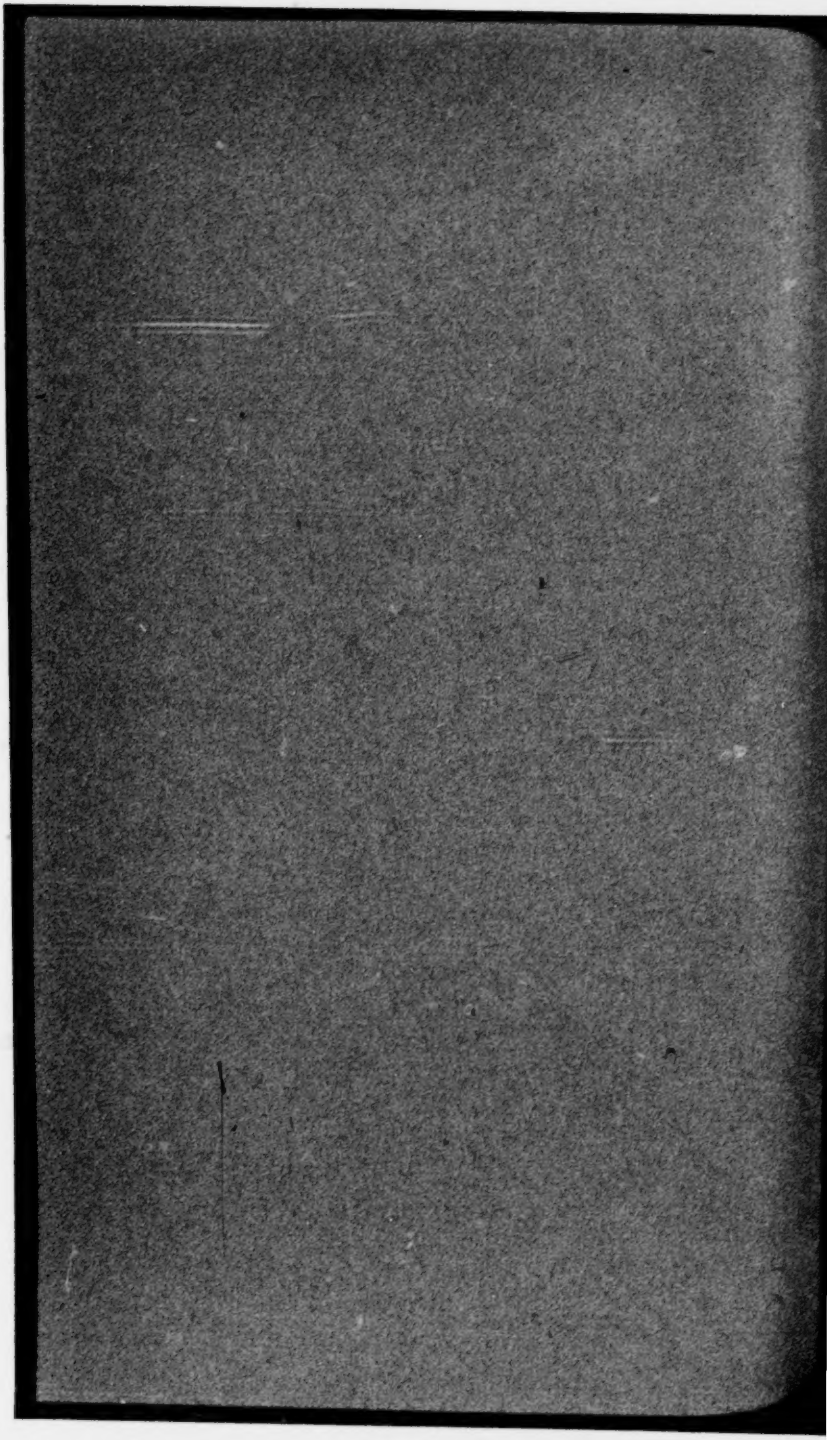
vs.

THE CENTRAL OF GEORGIA RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED MAY 2, 1914.

(23,000)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 10, 1914.

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a United States Supreme Court.

WILLIAM A. WRIGHT, Comptroller General of Georgia, Appellant,
and
CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern Division of the Northern District of Georgia.

1 *Original Bill.*

In the District Court of the United States for the Northern District of Georgia. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of the State of Georgia.

To the Honorable the Judges of said Court, sitting in equity:

Central of Georgia Railway Company brings this its bill of complaint against William A. Wright, as Comptroller General of the State of Georgia, and for cause of complaint respectfully shows:

1. Complainant is a railroad corporation chartered by, and existing under, the laws of the State of Georgia, with its principal office in Savannah within the Southern Judicial District of said State.

The Defendant, William A. Wright, Comptroller General of the State of Georgia, is a resident and inhabitant of, and his office as such is in, Fulton County, Georgia, within the Northern District of Georgia.

2. This is a suit of a civil nature in equity. The matter in dispute exceeds, exclusive of costs and interest, the sum or value of Three Thousand ($3,000.00) Dollars. The case arises under the Constitution of the United States.

3. The said William A. Wright, as Comptroller General of the State of Georgia, is empowered, under the statutes of the State of Georgia, to assess for taxes all railroad property and franchises for State, Counties, Municipalities and School Districts, and to issue execution to enforce the collection of the same. The Comptroller General, in this respect, is clothed with the power of the State, and its said political subdivisions, and acts for, and in behalf of, said State, and its said political subdivisions.

4. The said William A. Wright, as Comptroller General of the State of Georgia on the 21st day of November, 1911 demanded of Complainant that it should return for ad valorem taxation
2 the Augusta & Savannah Railroad and Southwestern Railroad, and such of its branches as heretofore have not been returned for ad valorem taxation. The following is a copy of the demand:

"Nov. 21st, 1911.

Mr. Charles H. Markham, President of the Central of Georgia Railway Company, 135 Park Row, Chicago, Ill.

DEAR SIR: I am advised by Attorney General Felder and by Judge Hart, special counsel, that you should return for ad valorem taxation the Augusta & Savannah Railroad and the Southwestern Railroad and such of its branches as heretofore have not been returned for ad valorem taxation, now being operated by the Central of Georgia Railway Company. The State for several years has collected taxes from these corporations on the basis of one-half of one per cent. of their net income, in accordance with the provisions in their charters. I am advised that these roads have been purchased by the Central of Georgia Railway Company at judicial sale under decree of foreclosure against your immediate predecessor in title and under leases in perpetuity. The State contends that the tax provisions in the original charters were personal to the companies and were not vendible or assignable, and therefore could not be invoked by the Central of Georgia Railway Company as the measure of its liability for taxation either as owner or lessee. You are therefore in default in not returning this property for taxation and I demand that you make return of this property, or your interest therein, and the value of your property connected therewith within twenty (20) days for the purpose of ad valorem taxation, or in default I shall proceed to assess the same as by statute provided from the best information obtainable.

Yours very truly,

WM. A. WRIGHT,
Comptroller General."

5. On December 16th 1911 Complainant returned under protest the Augusta & Savannah Railroad and those portions of the Southwestern Railroad, which had heretofore not been returned, for ad valorem taxes. A copy of the return is hereto attached marked Exhibit "A" and hereby made a part of this bill.

6. On February 16th, 1912 the said Defendant issued an execution against Complainant in the sum of $4,709.44 and interest at seven (7%) per cent. per annum from December 20th 1911, as its taxes for the year 1911 due the State of Georgia, the said tax being assessed to Complainant on an ad valorem basis on the real estate, roadbed and franchise value of the Augusta & Savannah Railroad. A copy of the tax execution is hereto attached marked Exhibit "B" and hereby made a part of this bill. The amount of said tax execution was arrived at by assessing the full value of the Augusta & Savannah Railroad, and property and appurtenances thereto, and its franchises, at their full market value, as shown by the return, at the rate of .005 on the dollar, which is the rate imposed by the State of Georgia for the year 1911 on all property in said State, and
3 then deducting from the amount so arrived at the sum of $437.96, which is the amount of the income tax which was paid to the State of Georgia on the Augusta & Savannah Railroad under and in pursuance of the charter of the Augusta & Savannah Railroad, the calculation being as follows:

Value of Augusta & Savannah Railroad and appurtenances	$949,155.00
Value of franchises	80,325.00
Total	$1,029,480.00
Rate of taxation	.005
	5,147.40
Less income tax	437.96
	$4,709.44

On February 16th 1912 the said defendant issued an execution against Complainant in the sum of $16,205.33, and interest at seven (7%) per cent. per annum from December 20th 1911, as its taxes for the year 1911 due the State of Georgia, the said tax being assessed to Complainant on an ad valorem basis on the real estate, roadbed and franchise value of the Southwestern Railroad. A copy of the tax execution is hereto attached marked Exhibit "C" and hereby made a part of this bill. The amount of said tax execution was arrived at by assessing the full value of the Southwestern Railroad, and property and appurtenances thereto, and its franchises, at their full market value, as shown by the return, at the rate of .005 on the dollar, which is the rate imposed by the State of Georgia for the year 1911 on all property in said State, and then deducting from the amount so arrived at the sum of $2,188.77, which is the amount of the income tax which was paid to the State of Georgia on the Southwestern Railroad under and in pursuance of the charter of the Southwestern Railroad, the calculation being as follows:

Value of Southwestern Railroad and appurtenances	$3,393,645.00
Value of franchises	285,175.00
Total	$3,678,820.00
Rate of taxation	.005
	18,394.10
Less income tax	2,188.77
	$16,205.33

7. The Defendant has assessed taxes for the year 1911 against the Complainant with respect to the railroad and franchises of Augusta & Savannah Railroad in favor of the Counties, Municipalities and School Districts through which the Augusta & Savannah Railroad runs aggregating $11,687.39, with interest from December 20th 1911, and has issued execution against Complainant for the same, the said executions being substantially in the
4 form of the execution issued by the defendant for State taxes for the year 1911.

The Defendant has assessed taxes for the year 1911 against the Complainant with respect to the railroad and franchises of South-

western Railroad in favor of the Counties, Municipalities and School Districts through *with* the Southwestern Railroad runs aggregating $40,101.16, with interest from December 20th 1911, and has issued execution against Complainant for the same, the said executions being substantially in the form of the execution issued by the Defendant for State taxes for the year 1911.

All the executions for 1911 taxes against Complainant with respect to the railroads and franchises of the Augusta & Savannah Railroad and Southwestern Railroad aggregate $72,703.32, besides interest from December 20th 1911 and costs.

8. The Defendant is also about to assess Complainant for the years prior to 1911 for State, County, Municipal and School District taxes with respect to the railroads and franchises of Augusta & Savannah Railroad and Southwestern Railroad Company, and to issue execution on such assessments in substantially the same form, and upon substantially the same grounds which the executions have been issued by him for the year 1911, hereinbefore described. The executions so about to be issued will aggregate a very large sum of money.

9. Central Railroad & Banking Company of Georgia was chartered by an Act of the General Assembly of the State of Georgia, approved December 14th 1835, and operated a system of railroads in the State of Georgia until the 4th day of March 1892. The main line of road operated was the line of railroad from Savannah, Georgia, to Atlanta, Georgia. This main line was connected at Macon, Georgia, with the lines of the Southwestern Railroad Company, and at Millen, Georgia, with the line of the Augusta & Savannah Railroad.

On the 1st day of May 1862 the Augusta & Savannah Railroad (formerly Augusta & Waynesboro Railroad) leased its railroad and franchises, which runs from Millen, Georgia, to Augusta, Georgia, to the Central Railroad & Banking Company of Georgia in perpetuity, a copy of the lease being hereto attached and marked Exhibit "D" and hereby made a part of this bill.

5 On the 24th day of June 1869 the Southwestern Railroad Company leased its railroad and franchises to the Central Railroad & Banking Company of Georgia in perpetuity, a copy of said lease being hereto attached, marked Exhibit "E" and hereby made a part of this bill.

The Central Railroad & Banking Company of Georgia, Augusta & Savannah Railroad (then known as Augusta & Waynesboro Railroad) and Southwestern Railroad Company were specifically authorized to enter into said respective leases by a special Act of the General Assembly of Georgia, approved January 22nd 1852, entitled "An Act to authorize the Central Railroad & Banking Company of Georgia to lease and work such railroads as now connect, or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have or may hereafter have their respective railroads connecting with the said Central Railroad to make leases thereof for a term of years, or during the continuance of their respective charters." In the body of the

Act the Augusta & Savannah Railroad and the Southwestern Railroad Company are specifically mentioned, the charters of the said two companies last named being respectively perpetual charters.

Under the 16th section of the Act incorporating the Augusta & Waynesboro Railroad (subsequently Augusta & Savannah Railroad) approved December 31st, 1836, the Augusta & Waynesboro Railroad was expressly authorized to "rent or farm out all or any part of their exclusive right of transportation of freight or conveyance of passengers, with the privilege, to any individual or individuals or other company, and for such term as may be agreed upon. And the said company, in their right of carriage or transportation of freight, or passengers or the persons or company so renting from said company, right of transportation or conveyance shall, so far as they act on the same, be regarded as common carriers."

10. On March 4th 1892 all of the property and assets of the Central Railroad & Banking Company of Georgia, including its system of railroads and its leasehold interest in the Augusta & Savannah Railroad and in the Southwestern Railroad, passed into the hands of Receivers of the Circuit Court of the United States for the
Southern District of Georgia. On June 30th 1893, the said
6 Receiver being then in possession of the leaseholds of the Augusta & Savannah Railroad and said Southwestern Railroad, and operating the same under the said leases the Received was directed by said Circuit Court of the United States for the Southern District of Georgia to ascertain whether they desired to permit their properties to remain in the hands of the said Receiver, as representing the lessee Company, with the right on the part of the said corporations, or either of them, to claim the net results of the operation of their respective properties up to the rental contract, but not beyond; or whether the said respective corporations should receive from the Receiver the surrender of the leasehold interests held by him as Receiver of the Central Railroad & Banking Company of Georgia, and the Court further ordered that if any of the said Companies should make known their option to receive the surrender of the leasehold interest, the said Receiver should apply to the Court for an order authorizing and directing the surrender of the same; or should any of the said Companies elect to permit the said leasehold interests to remain in the hands of the Receiver, said Companies should have the right to claim from said Court the net results of the operations of their properties by the Receiver up to the rental contract price and no more, unless the Receiver should, under the order of the Court, elect to retain said leasehold interests and to pay therefor the rental contract price.

The Augusta & Savannah Railroad and the Southwestern Railroad Company both elected to permit their respective properties to remain in the hands of the said Receiver under this order, and the said Receiver operated said railroads respectively from said date to November 1st 1895, and paid to the Augusta & Savannah Railroad and the Southwestern Railroad Company respectively the net earnings of their lines of railroad, which in neither case was as much as the rental stipulated for under the respective leases.

11. All of the properties and assets of the Central Railroad & Banking Company of Georgia were sold under foreclosure decrees, and at judicial sales, and for the mast part were purchased by Samuel Thomas and T. F. Ryan, who had put forth a plan of re-organization for the acquirement of the properties and assets of the
7 Central Railroad & Banking Company of Georgia, and organized a new Company to be known as the Central of Georgia Railway Company to take over the railroads and properties purchased by them under said re-organization plan.

As a part of said re-organization plan the said Samuel Thomas and T. F. Ryan negotiated a modification and renewal of the leases of the Augusta & Savannah Railroad and Southwestern Railroad whereby the Augusta & Savannah Railroad and Southwestern Railroad Company were each to receive for the time such railroads were operated by the Receiver an amount equivalent to five (5%) per cent. on their respective capital stocks, diminished by such amounts as the Receiver had paid to them from the earnings of their respective railroads, and whereby the said Augusta & Savannah Railroad and Southwestern Railroad Company would modify and renew their respective leases to the Central Railroad & Banking Company of Georgia to a new corporation to be formed by said Thomas and Ryan, as purchasers, and to be known as the Central of Georgia Railway Company.

Among the assets and properties purchased by said Thomas & Ryan, under the said re-organization plan, were the leasehold interests of the Central Railroad & Banking Company of Georgia in the Augusta & Savannah Railroad and the Southwestern Railroad Company, and possession of the railroads and properties of these companies was delivered by the Receivers on the order of Thomas & Ryan, purchasers, to Central of Georgia Railway Company lessee under a decree of the said Circuit Court of the United States dated November 1st 1895.

12. On October 17th 1895, upon the petition of Thomas & Ryan, as purchasers under judicial sale aforesaid, and their associates, Central of Georgia Railway Company was incorporated under an Act of the General Assembly of the State of Georgia for the incorporation of railroads, approved December 17, 1892, and the acts amendatory thereof, with all the rights, powers, privileges and immunities enjoyed by the Central Railroad & Banking Company of Georgia under its original charter and amendments thereto, and with all the
8 rights, powers, privileges and franchises provided in the laws of Georgia and particularly by the said Act approved December 17, 1892, and the acts amendatory thereof, and the said petitioners under said charter and the provisions of the said Act under which they were incorporated, were substituted for the original stockholders of the said Central Railroad & Banking Company of Georgia. The said petition for incorporation specified particularly that the said Central Railroad & Banking Company of Georgia was endowed with corporate capacity and power under the above mentioned act of January 22, 1852, to lease and work Southwestern

Railroad, the Augusta & Savannah Railroad and all other lines of railroad connecting with its own.

13. On October 24th 1895, Augusta & Savannah Railroad (formerly Augusta & Waynesboro Railroad) entered into a contract with the Central of Georgia Railway Company whereby the lease of its railroad to the Central Railroad & Banking Company of Georgia was modified and renewed to the Central of Georgia Railway Company, the said renewed and modified lease running from the 1st day of November 1895 for the full term of 101 years, and renewable in like periods upon the same terms forever, the right to renewals to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Under said lease the lessee covenanted to pay "all federal, state, county or municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and Laws of the State of Georgia." The said lease provided for an annual rental which is paid semi-annually. Said lease is defeasible upon the non-payment of the rent. The lease is in no essential respects different from an ordinary lease of real estate, except that the term is for a long period of time. A copy of the lease is hereto attached, marked Exhibit "F" and hereby made a part of this bill.

On October 17th 1895 Southwestern Railroad Company entered into a contract with the Central of Georgia Railway Company whereby the lease of its railroad to the Central Railroad & Banking Company of Georgia was modified and renewed to the Central of Georgia Railway Company, the said renewed and modified
9 lease running from the 1st day of November 1895 for the full term of 101 years, and renewable in like periods upon the same terms forever, the right to renewals to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Under said lease the lessee covenanted to pay "all federal, state, county or municipal taxes and assessments, ordinary and extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and Laws of the State of Georgia." The said lease provided for an annual rental which is paid semi-annually. Said lease is defeasible upon the non-payment of the rent. The lease is in no essential respects different from an ordinary lease of real estate, except that the term is for a long period of time. A copy of the lease is hereto attached, marked Exhibit "G" and hereby made a part of this bill.

14. "Augusta & Waynesboro Railroad" was incorporated under an Act of the General Assembly of Georgia, approved December 31st 1837. Its name was subsequently changed to "Augusta & Savannah Railroad", by an Act of the General Assembly of the State of Georgia, approved February 16th 1856. Under the 13th section of the original charter of the Augusta & Waynesboro Railroad (now Augusta & Savannah Railroad) granted December 31st 1838, it was enacted "that the said railroad and the property of said Company shall not be subject to be taxed higher than one-half of one per cent.

on its annual income; and no city or town corporation shall have power to tax the stock of said company but may tax any property, real or personal, of said company within the jurisdiction of said city or town, in the same ratio of taxation of like property." The Augusta & Savannah Railroad built its railroad under said charter from Millen, Georgia, to Augusta, Georgia, and said charter, and the provision with respect to taxation hereinbefore quoted, constitute an inviolable and irrepealable contract with the State of Georgia, and the provision with respect to tax exemption is not repealed, modified or affected in any manner by the lease of said railroad to the Central Railroad & Banking Company of Georgia, and its subsequent modification and renewal to the Central of Georgia Railway Company.

10 The charter of the Augusta & Savannah Railroad has been adjudged and decreed to be an inviolable and irrepealable contract with the State of Georgia by a decree of the Superior Court of Fulton County in a suit instituted in said Court by Augusta & Savannah Railroad against the State of Georgia, which decree upon the writ of error taken by the State of Georgia was finally affirmed by the Supreme Court of the State of Georgia at the January Term 1875, which decision is reported in 54 Georgia Rep. p. 401. The provisions with respect to tax exemptions have not been repealed, modified or affected in any manner by the lease of said railroad to Central Railroad & Banking Company of Georgia or its subsequent modification and renewal to Central of Georgia Railway Company.

15. Southwestern Railroad Company is a railroad corporation chartered by the State of Georgia by special Act of the General Assembly approved December 27th 1845. This charter was afterwards amended by sundry acts of the General Assembly, the detaails of which are not material to this cause. The Muscogee Railroad Company was chartered by the General Assembly of the State of Georgia by a special Act passed December 27th 1845. The Muscogee Railroad Company constructed the line from Butler to Columbus, Georgia, being seventy-one (71) miles in length. By an Act of the General Assembly approved March 4th 1856 the Muscogee Railroad Company, its franchises and property, were united and consolidated with the Southwestern Railroad under the charter of the Southwestern Railroad, and all the rights, privileges and property of the Muscogee Railroad Company became part and parcel of the Southwestern Railroad Company. Under the original charter of the Southwestern Railroad Company granted December 22nd 1845 it is enacted in the 14th section thereof "that said railway, and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its normal net income." By the 5th section of the charter of the Muscogee Railroad Company, granted December 27th 1845, and under which the line from Butler to Columbus was built, it is enacted "that the capital stock of said railroad company shall not be taxed by the State higher than one-half of one per cent." upon its net income, nor shall any other tax be levied or collected on the

11 stock of said Company."

Under the charter of the Southwestern Railroad Company certain lines were built which are a part of the Southwestern Railroad, but which are not entitled to the tax exemption hereinbefore set forth, to-wit:

1. Line from Cuthbert to Eufaula, Ala.
2. Line from Albany, Ga. through Arlington and Blakely, Ga. to Columbia, Ala.
3. Line from Albany, Ga. to Americus, Ga.
4. Line from Americus, Ga. to Smithville, Ga.
5. Line from Ft. Valley Ga. to Perry, Ga.

The provision of the original charter of the Southwestern Railroad Company with respect to taxation, which is hereinbefore recited, applies to and covers;

1. Line from Macon, Ga. to Americus, Ga.
2. Line from Smithville, Ga. to Cuthbert, Ga.
3. Line from Cuthbert, Ga. to Ft. Gaines, Ga.
4. Line from Ft. Valley, Ga. to Butler, Ga.

The provision of the original charter of the Muscogee Railroad Company, with respect to taxation, which is hereinbefore recited, applies to and covers;

1. Line from Butler, Ga. to Columbus, Ga.

All of said lines of railroad of the Southwestern Railroad Company, and of the Muscogee Railroad Company, which was consolidated with the Southwestern Railroad Company (both the lines covered and those not covered by the special charter provision with respect to taxation) are line of the Southwestern Railroad Company, which were covered and included in the original lease of the Southwestern Railroad Company to Central Railroad & Banking Company of Georgia, and which were operated by it under said lease, and are the same lines which are covered by the modified and renewed lease to Central of Georgia Railway Company, and operated by it under said lease.

The charter of the Southwestern Railroad Company has been adjudged and decreed to be an inviolable and irrepealable contract with the State of Georgia by decree of the Superior Court of Fulton County in litigation therein pending between the State of Georgia and Southwestern Railroad Company, which litigation was carried to the Supreme Court of the United States and the said decree was rendered finally in the Superior Court of Fulton County by mandate of the Supreme Court of the United States. The decision of the
12 Supreme Court of the State of Georgia in this case was decided at the January Term 1875, and is reported in 54 Ga. p. 40. The decision of the Supreme Court of the United States is reported in 92 U. S. 676.

Further litigation between the same parties in the Superior Court of Bibb County, Georgia, finally resulted in a decree holding the said charter exemptions of the Southwestern Railroad applicable to certain lines and not applicable to certain other lines of South-

western Railroad as hereinbefore stated. This case was decided by the Supreme Court of Georgia in its February Term 1880 and is reported in 64 Ga. Rep. 783, and was decided by the Supreme Court of the United States at the October Term 1885 and was reported in 116 U. S. 231.

The provisions with respect to tax exemptions have not been repealed, modified or affected in any manner by the lease of said railroad to Central Railroad & Banking Company of Georgia or its subsequent modification and renewal to Central of Georgia Railway Company.

16. Neither the Augusta & Savannah Railroad nor the Southwestern Railroad owns any engines, cars or like equipment. All of the engines, cars and like equipment used by Central of Georgia Railway Company in the operation of both the Augusta & Savannah Railroad and the Southwestern Railroad are owned by Central of Georgia Railway Company and are returned by it for ad valorem taxation under the laws of Georgia, and all taxes for the year 1911, and prior years, have been paid by Central of Georgia Railway Company.

17. The lines of the Southwestern Railway Company covered by said lease, and which are not covered by the tax exemption of the charter of the Southwestern Railroad Company, or the Muscogee Railroad Company, to-wit;

1. Line from Cuthbert to Eufaula
2. Line from Albany to Columbia.
3. Line from Albany to Americus
4. Line from Americus to Smithville
5. Line from Ft. Valley to Perry

have been regularly and continuously returned for ad valorem taxation, and all taxes due on the same for the year 1911 and prior years have been paid. The exempt lines of the Southwestern Railroad, to-wit;

13
1. Line from Macon to Americus
2. Line from Smithville to Cuthbert
3. Line from Cuthbert to Ft. Gaines.
4. Line from Ft. Valley through Butler to Columbus

have been returned for taxation to the State of Georgia, and were taxed for the year 1911 and for all prior years in accordance with the special tax provisions in the charter of the Southwestern Railroad Company, and in the charter of the Muscogee Railroad Company, to-wit; at the rate of one-half of one per cent. upon the net annual income therefrom, and the said income tax has been duly paid for the year 1911 and all prior years and the same income tax, and none other, has been always demanded by and paid to the State of Georgia with respect to said exempt lines.

18. The Augusta & Savannah Railroad, being a line from Millen, Ga. to Augusta, Georgia, was for the year 1911 and for all years prior thereto duly returned to the State of Georgia for taxation, in accordance with the special provision in its charter, hereinbefore

recited, and has been taxed at the rate of one-half of one per cent. upon the income thereof, and the said income tax for the year 1911, and for all prior years, has been duly paid. The said income tax, and no other, has always been demanded by, and paid to, the State of Georgia with respect thereto.

19. The said William A. Wright has been continuously Comptroller General of the State of Georgia at least since the year 1879, and never during his incumbency in said office, or at any time prior thereto, has Central of Georgia Railway Company, or its predecessors, The Central Railroad & Banking Company of Georgia, been taxed with the line of the Augusta & Savannah Railroad or with the lines of the Southwestern Railroad Company hereinbefore described as exempt, or with the property appurtenant thereto, or the franchises thereof. The lines of the Southwestern Railroad Company which are not covered by said charter exemption have been duly returned for ad valorem taxes, and the taxes thereon have been paid. The return of December 16th 1911 made by complainant to defendant (Exhibit "A" hereof), and the executions issued thereon, covered not all lines of Southwestern Railroad Company but only the lines exempt from ad valorem taxation as above described.

14 20. Complainant avers that it is not now, and never has been. the owner of the lines of railroad or the property appurtenant thereto or the franchises of either the Augusta & Savannah Railroad or of the Southwestern Railroad Company, and that now, and at all times heretofore, Augusta & Savannah Railroad and Southwestern Railroad Company have been owners in fee simple of their respective lines of railroad and property appurtenant thereto and franchises thereof, and that the jurisdictional statement of fact in the executions issued by the Comptroller General hereinbefore described and set forth to the affect that the Augusta & Savannah Railroad and Southwestern Railroad are owned by Central of Georgia Railway Company is not true in point of fact, but on the contrary is as stated by Complainant. The only connection or relation which Complainant now holds or has heretofore held with or to the railroads and property appurtenant thereto and franchises of Augusta & Savannah Railroad and Southwestern Railroad Company is that of lessee, and Complainant holds and operates said properties under and by virtue of its contracts of lease with the Augusta & Savannah Railroad and the Southwestern Railroad Company respectively, and not otherwise. Complainant has no estate, and has never had in the properties of the Augusta & Savannah Railroad or the Southwestern Railroad Company respectively, but simply operates the said properties under leases which are defeasible upon its failure to pay the rental provided for in the leases.

21. The tax executions which have been issued by the defendant against the complainant for the year 1911, and those of a like character which are about to be issued by him for previous years are with respect to property all of which is taxable under the charters of the Augusta & Savannah Railroad, Southwestern Railroad Company and the Muscogee Railroad Company (consolidated with the Southwestern Railroad Company) at the rate of one-half of one per cent

on the net income thereof, the said property has been duly returned for said income taxes and said income tax has been duly paid, and said properties, under their respective charters, which are inviolable and irrepealable contracts, cannot be taxed at a higher rate or in a different manner than as provided for in said respective charters.

The said income tax imposed with respect to said properties is
15 in lieu of, and in bar of, any other or different tax under the charters of said Companies. The attempt of the Comptroller General to tax the same identical property to Complainant at its full market value for ad valorem taxes for State, County, Municipal and School Districts on the fiction that said properties are owned by Complainant would, if successful, deprive Complainant of its property without due process of law, and deny it the equal protection of the laws contrary to the 14th Amendment to the Constitution of the United States and therefore the assessment of said properties to Complainant and executions issued thereon, are null and void and contrary to the 14th Amendment to the Constitution of the United States in that thereby Complainant would be deprived of its property without due process of law and denied the equal protection of the laws.

22. The assessment made by the Comptroller General against Complainant and the executions issued thereon with respect to the property of the Augusta & Savannah Railroad and the Southwestern Railroad Company are not assessed and issued with respect to the interest of the Complainant in said two railroads but the very properties themselves are assessed to Complainant at their full market value. The assessments are made and the executions issued on the theory and on the allegation of fact that Complainant is the owner of said two railroads and liable for ad valorem taxes upon the full market value of the same. The whole proceeding is a plan to do and accomplish by indirection that which cannot be accomplished by direction, and the levy and assessment to Complainant of the property owned by another corporation is in effect and substance an effort to deprive Complainant of its property without due process of law and to deny it the equal protection of the laws, and is therefore null and void and contrary to the 14th Amendment to the Constitution of the United States.

23. The Defendant in his capacity as Comptroller General of the State of Georgia, being clothed with the power of the State, and acting for and in behalf of the State, is seeking to deprive Complainant of its property without due process of law, due or otherwise. Under the statutes of the State of Georgia taxes are to be charged against the owner of the property if known, and against the specific property itself if the owner is not known. Therefore the railroads and property appurtenant thereto and franchises of Augusta & Savannah Railroad and Southwestern Railroad Company are taxable to each of said Companies respectively as the owners of said property, and not to the Central of Georgia Railway Company which is not the owner. It has always been the universal practice to charge and assess taxes to the owner where known, and
16 Augusta & Savannah Railroad and Southwestern Railroad Company were known to the Defendant to have been the

owners during the year 1911 and previous years of the said railroads. The said Comptroller General contrary to law, and without any warrant of law, is seeking by virtue of his office and by virtue of the powers conferred upon him under the laws of Georgia, and in behalf of the State of Georgia, to deprive Complainant of its property without due process of law, and to deny it the equal protection of the laws contrary to the 14th Amendment to the Constitution of the United States.

24. The property described in the executions issued by the Defendant as Augusta & Savannah Railroad, and the property described in the executions issued by the Defendant as Southwestern Railroad are respectively exempt from ad valorem taxation under the provisions of their charters, hereinbefore set out, which charters are solemn inviolable and irrepealable contracts with the State of Georgia. The income tax imposed under said charters having been paid, the said properties are relieved from any further taxation. If said properties are lawfully taxable beyond the amount specified in said charters, or in any other manner, Complainant is liable to its lessor for said taxes under and by virtue of its lease contracts. Complainant entered into said lease contracts on the faith of the tax provisions contained in the charters of said companies, and the said tax provisions were a part of the consideration inducing Complainant and its predecessor to enter into said lease contracts. The said leases have been entered into under specific authority from the State of Georgia, and said tax provisions are not only an inviolable contract between the State of Georgia and said Augusta & Savannah Railroad and Southwestern Railroad Company, but entered into and became a part of the lease contracts between Complainant and said Augusta & Savannah Railroad and said Southwestern Railroad Company respectively.

The executions issued by the Comptroller General against Complainant for taxes on the Augusta & Savannah Railroad are a lien on the specific property known as the Augusta & Savannah Railroad, and the executions issued by the Defendant against Complainant on the property described as Southwestern Railroad are a lien on the specific property known as Southwestern Railroad.

17 Defendant claims that he is proceeding under the Constitution of the State of Georgia of 1877 which provides:

Article 4, Section 1, Paragraph 1.

"The right of taxation is a sovereign right, inalienable, indestructible, is the life of the State, and rightfully belongs to the people in all republican governments, and neither the General Assembly, nor any nor all other departments of the government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts, and all other acts whatsoever, by said government or any department thereof, to effect any of these purposes, shall be and are hereby declared to be null and void for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant, or contract whatsoever by the General Assembly."

Article 7, Section 2, Paragraph 1.

"All taxes shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Article 7, Section 2, Paragraph 4.

"All laws exempting property from taxation, other than the property herein enumerated, shall be void."

Defendant claims that he is proceeding also under the Act of the General Assembly, approved February 28th 1874, entitled "An Act to amend the tax laws of this State, so far as the same relate to railroad companies, and to define the liabilities of such companies to taxation, and to repeal so much of the charters of such companies, respectively, as may conflict with the provisions of this Act." Said Act is now in part codified in the Code of 1911, Section 1032 et seq.; and also under Section 1018 of the Code of 1911, which first became law when codified in the Code of 1895, December 17th 1895, as Code Section 778, to-wit: "taxes are to be charged against the owner of property if known, and against the specific property itself if the owner it not known. Life tenants and those who own and enjoy the property, are chargeable with the tax thereon. Hence, while the public may treat property as belonging either to the maker or the holder of a bond for titles, when the latter is in possession, yet as between the parties the one receiving the rents or enjoying the use is liable for the tax."

The said Constitution and laws were passed long subsequent to the charter provisions with respect to taxation of the Augusta & Savannah Railroad and Southwestern Railroad and to the
18 Act of 1852 authorizing the leases, and when applied or construed so as to impair the obligation of said charters, as they have been applied and construed, are null and void, and contrary to the Constitution of the United —, which in Article 1, Section 10, Paragraph 1 provides that "no State shall * * * pass any * * * law impairing the obligation of contracts."

The said laws when so construed and applied as they have been also impair the obligation of the original lease contracts entered into between Central Railroad & Banking Company of Georgia and the Augusta & Savannah Railroad and the Southwestern Railroad Company respectively, and also the modification and renewal of said contracts to Central of Georgia Railway Company, and said laws are therefore null and void and contrary to Article 1, Section 10, Paragraph 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

25. The relation of Complainant to the properties of Southwestern Railroad Company and Augusta & Savannah Railroad and to those two corporations are to-day in all respects the same as they were on November 1, 1895, when petitioner first entered into possession of them, and differ in no material respect from the relations of the Central Railroad & Banking Company of Georgia to those properties and those corporations from 1862 to 1895 in the case of Augusta &

Savannah Railroad, and from 1869 to 1895 in the case of the Southwestern Railroad Company. These relations have been public and notorious and were known at the time of the litigation over the taxation of Southwestern Railroad Company and Augusta & Savannah Railroad in 1874 and the years immediately following, which is herein referred to, and the fact that these properties were then under lease to The Central Railroad & Banking Company of Georgia (to which this Complainant is successor) is referred to in the published reports of those cases. These relations have been known during all this period to the State of Georgia, and particularly to the defendant William A. Wright during his long incumbency in his office of Comptroller General of Georgia, which he has held since 1879. In each year, at the time when he received returns from and assessed taxes against Southwestern Railroad Company and Augusta &
19 Savannah Railroad and Complainant, these relations and all material facts which could affect his assessment have been well known to him.

The taxes so returned and assessed and paid for 1911 and prior years were returned by the Southwestern Railroad Company, Augusta & Savannah Railroad, and Central of Georgia Railway Company, assessed by the Comptroller General of Georgia, paid by the Railway Companies, and received by the state and its subdivisions, all as being all the taxes due or to become due by said corporations in respect to the properties due or to become due by said corporations in respect of the properties of Southwestern Railroad Company and Augusta & Savannah Railroad for said years, and as in full of all lawful taxation for said years; and no further sum can be lawfully enacted of Southwestern Railroad Company, or Augusta & Savannah Railroad, or of Complainant or of any other person on account of said properties or any part thereof, and the State and its political subdivisions are estopped from claiming them.

26. The executions for taxes which have been issued by the Comptroller General, and those of a like nature which he is about to issue, create a lien, and a cloud upon the title of all of the property of Complainant, if any property of Complainant is levied on, and sold under said executions, a deed will be executed to the purchaser by the Sheriff and said deed will create a cloud upon the title of Complainant, and will give to the defendant thereunder an apparent right in or to the property levied upon. The facts showing the invalidity of said execution and of any deed made thereunder will not and do not appear upon the face of said execution and deed, but are a matter of proof extraneous thereof, and under the laws of the State of Georgia, a purchaser asserting title thereunder would be required only to put in evidence the execution and the deed made in pursuance thereof, without showing any other of the proceedings, but the same are matters of proof to be produced by any person attacking the same. Complainant cannot immediately or effectually maintain or protect its rights, except by staying the further progress of said executions, and any attempted sale thereunder, and the further progress of said executions should be stayed and enjoined in

order to prevent a cloud being created upon the title of Com-
20 plainant in and to its property.

27. Complainant further alleges that unless said executions hereinbefore described, and other like executions for previous years which Complainant alleges upon information and belief the Defendant will issue, are enjoined Complainant will be subjected to a multiplicity of suits, and the injury done to your petitioner will be irreparable in damages. Complainant is remediless in the premises under the strict rules of common law, and can have adequate relief only in a Court of equity where matters of this nature are relievable, and unless a writ of injunction, as hereinafter prayed is issued immediately the injury to Complainant will be irreparable.

28. Complainant expressly waives discovery, and prays;

1. That this Honorable Court will adjudge and decree that the executions heretofore issued by the Defendant and those which are about to be issued by him of the same tenor and effect, for taxes on the Augusta & Savannah Railroad and the Southwestern Railroad for previous years are null and void, and of no effect upon the grounds set forth in this bill.

2. That this Honorable Court will issue a writ of perpetual injunction directed to the said William A. Wright, Comptroller General of the State of Georgia, and his successors in office, and all persons who are or may hereafter be charged with the duty of assessing and collecting taxes within the State of Georgia or any political subdivision thereof, commanding and perpetually enjoining them under proper pains and penalties to desist from all efforts to collect the said taxes herein complained of and also perpetually enjoining them from attempting to enforce or collect the executions already issued, and also perpetually enjoining them from issuing, enforcing or collecting executions of a like character for taxes for the year 1911 or previous years with respect to the property described as Augusta & Savannah Railroad and Southwestern Railroad.

3. That this Honorable Court will issue a rule against the Defendant to show cause at a time and place to be fixed by the Court why the injunction as above prayed for on final decree should not be issued pendente lite.

4. That the Court will immediately issue a restraining
21 order to remain in force until the issuance of the injunction pendente lite, and until the further order of the Court, restraining the Defendant and others as aforesaid pending the adjudication of the issues herein.

5. That the Court will grant unto Complainant a writ of subpœna against the Defendant commanding said Defendant, under a penalty to be therein named, to appear in said Court on a certain day to be therein named to answer the premises and abide by and perform such decree as may be passed herein.

6. That the Complainant may have such other and further relief as the nature of the case may require.

And Complainant will ever pray etc.

LAWTON & CUNNINGHAM,
LITTLE & POWELL,
Solicitors for Complainant.

GEORGIA, *Chatham County:*

Before me personally appeared Alexander R. Lawton who being duly sworn deposes and says that he is Vice President of the Central of Georgia Railway Company, Complainant in this case, and that the facts stated in the bill of complaint are true to the best of his knowledge, information and belief.

ALEXANDER R. LAWTON.

Sworn to and subscribed before me this 29th day of March, 1912.

GEORGE O. DONNELL,
Notary Public, Chatham Co., Ga.

22 EXHIBIT "A."

Central of Georgia Railway Company.

SAVANNAH, GEORGIA, December 16, 1911.

The Comptroller General of Georgia has demanded that Central of Georgia Railway Company shall return for taxation all of the property of Augusta & Savannah Railroad (held by Central of Georgia Railway Company under lease from Augusta & Savannah Railroad Company) and all the property of "Southwestern Railroad Company" (held by the Central of Georgia Railway Company under lease from Southwestern Railroad Company) not heretofore returned and taxed.

In response to said demand Central of Georgia Railway Company hereby makes this its return under protest and affixes values to the property in question as hereinafter set out. In each case is shown the aggregate value of the whole railroad and appurtenances, including rolling stock and other property used in connection therewith and not exempt by law from taxation. This rolling stock and other non-exempt property has been heretofore returned for taxation, and taxes thereon have been paid. The value thereof as so returned is therefore deducted in each instance in order to show the value of property not heretofore taxed and now returned under protest. Values are:

Augusta & Savannah Railroad Property.

Aggregate value of whole property	$1,235,885.00
Rolling stock and other property heretofore returned	206,405.00
Value of Augusta & Savannah Railroad property returned under protest	$1,029,480.00

23	Forward		$1,029,480.00

Southwestern Railroad Property.

Cuthbert to Fort Gaines:

Aggregate value of whole property....	$241,521.00	
Rolling stock and other property heretofore returned.....	91,641.00	
Value of property returned under protest....		149,880.00

Fort Valley to Columbus:

Aggregate value of whole property....	1,717,055.00	
Rolling stock and other property heretofore returned.....	250,540.00	
Value of property returned under protest....		1,466,515.00

Macon to Americus—Smithville to Cuthbert:

Aggregate value of whole property....	2,362,932.00	
Rolling stock and other property heretofore returned.....	300,507.00	
Value of property returned under protest....		2,062,425.00
Value of Southwestern Railroad Property returned under protest.....		$3,678,820.00
Aggregate value of Southwestern Railroad property and Augusta & Savannah Railroad property returned under protest.....		$4,708,300.00

Mileage, division between counties, municipalities and school districts, and other details are shown in the tabulated statement hereto attached. If taxes should be assessed on this return in favor of counties, municipalities and school districts, there should in each case be deducted from "Aggregate value in county", "Aggregate value in city" and "Aggregate value in local school districts" as shown on the tabulated statements the sums set opposite these respective counties, cities and school districts under head of "Pro rata value personal property", and "Value real estate not used for railroad purposes" because on the amount stated in these two last named colums taxes have already been assessed and paid on the property which is the subject of this return. This return (but not on the tabulated statement) makes these reductions for the property as a
24 whole but not for the county, town and school district subdivisions.

None of the property returned is the property of Central of Georgia Railway Company. All is the property of "Augusta &

Savannah Railroad" and of "Southwestern Railroad Company" respectively. The only interest which Central of Georgia Railway Company has therein is the interest of a tenant under contracts of lease. Title thereto is exclusively in "Augusta & Savannah Railroad" and "Southwestern Railroad Company" respectively. The possession of Central of Georgia Railway Company of said property as tenant is conditional upon its continued payment of the rental and other sums fixed in the lease contracts as the fair value of the use thereof.

Central of Georgia Railway Company asserts, protests, and maintains that none of said property is taxable by the State of Georgia or any county, District or Municipality thereof for the following reasons;

1. None of the said property is the property of Central of Georgia Railway Company.

2. Even if said property be taxable, no part of it is taxable or assessable against Central of Georgia Railway Company, and no tax therefor can be lawfully assessed against Central of Georgia Railway Company.

3. The property described as Augusta & Savannah Railroad property is the property of "Augusta & Savannah Railroad" a corporation chartered by the State of Georgia under an inviolable contract which exempts it from all taxation except taxes heretofore paid.

4. The property described as Southwestern Railroad property is the property of "Southwestern Railroad Company" a corporation chartered by the State of Georgia under an inviolable contract which exempts it from all taxation except taxes heretofore paid.

5. Central of Georgia Railway Company, lessee, and Southwestern Railroad Company and Augusta & Savannah Railroad, lessors, have heretofore from time to time, as required by law, made to the Comptroller General of Georgia returns for taxation, which returns have been duly accepted by him under authority of law. On these returns taxes have been assessed by him against said three corporations and against their property, and all taxes so assessed and all taxes due thereunder have been paid. These assessments and payments are in full of all taxes due from said three corporations, or on account of the property of the said three corporations and each of them, to the State of Georgia and to all subdivisions thereof, and constitute full discharge and acquittance therefor. No further tax can lawfully be assessed against said three corporations or either of them, or the property thereof, and the State of Georgia and all subdivisions thereof are estopped from claiming any further tax.

6. The assessment of any tax upon any of the property herein valued would be contrary to law and particularly contrary to the Constitution of the State of Georgia, and the Constitution of the United States, which provide that no person shall be deprived of property without due process of law, and that no person shall be denied the equal protection of the law. Any statute or law of Georgia seeking to tax this property is null and void in that it seeks to impair the obligations of a contract.

7. There is no warrant or authority of law for calling upon Central of Georgia Railway Company to make return of the said property or any part thereof, nor for the assessment of any taxes thereon.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By ALEXANDER R. LAWTON, *Vice President.*

STATE OF GEORGIA,
County of Chatham:

Before me personally appeared Alexander R. Lawton, who being duly sworn deposes and says that he is Vice President of Central of Georgia Railway Company and that the foregoing statement contains by items a true and correct return of the property described therein without deducting any indebtedness and that the value thereof as stated is its full market value.

ALEXANDER R. LAWTON.

Sworn to and subscribed before me this 16th day of December, 1911.

____ ____,
Notary Public, Chatham County, Georgia.

26 EXHIBIT 1.

Augusta & Savannah Railroad.

Side track Miles	16.36
Main track Miles	53.35
Total value track and Real Estate	$949,155.00
Pro rata value personal property in County	206,405.00
Value of Franchises	80,325.00
Aggregate value in County	$1,235,885.00
Deduct Personal Property	206,405.00
Value returned under Protest	$1,029,480.00

EXHIBIT 2.

Southwestern Railroad Company.

(Fort Valley to Columbus.)

Side track miles	12.98
Main track miles	71.00
Total value track and Real Estate	1,360,015.00
Pro rata value personal property in County	250,440.00
Value Real Estate not used for R. R. purposes	100.00
Value of Franchises	106,500.00
Aggregate Value in County	1,717,055.00
Deduct personal property and Real Estate not used for R. R. purposes	250,540.00
Value returned under Protest	$1,466,515.00

27 EXHIBIT 3.

Southwestern Railroad Company.

(Macon to Americus—Smithville to Cuthbert.)

Side track Miles	34.40
Main track Miles	105.45
Total Value track and Real Estate	$1,904,250.00
Pro rate value personal property in County	289,907.00
Value Real Estate not used for R. R. purposes	10,600.00
Value of Franchises	158,175.00
Aggregate Value in County	$2,362,932.00
Deduct personal property and Real Estate not used for R. R. purposes	300,507.00
Value returned under Protest	$2,062,425.00

EXHIBIT 4.

Southwestern Railroad Company.

(Cuthbert to Fort Gaines.)

Side track Miles	1.82
Main track Miles	20.50
Total value Track and Real Estate	$129,380.00
Pro Rate value personal property in County	91,641.00
Value of Franchises	20,500.00
Aggregate value in County	241,521.00
Deduct personal property	91,641.00
Value returned under protest	149,880.00

28 EXHIBIT "B."

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To All and Singular the Sheriffs and other Lawful Officers of this State:

You are hereby commanded. That of all goods and chattels, lands, tenements and franchises of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State,

you cause to be made the sum of Four thousand Seven hundred and nine and 44/100 Dollars ($4,709.44) as its tax for the year 1911, due the State of Georgia, and interest at seven per cent per annum from December 20th 1911, under and by virtue of the laws of the State of Georgia, providing for the taxation of railroads in this State for State purposes. The above amount, $4,709.44, is the balance due the State as taxes for the year 1911 on an ad valorem basis on the real estate, road-bed, and franchise value, after crediting said company with one-half of one per cent. of the net income, viz., $437.96, on that portion of its property known in its system of railroads as the Augusta & Savannah Railroad, now owned and operated by said Central of Georgia Railway Company, and all lawful costs, and that you pay over said sum of money to the Comptroller General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actions and doings thereon.

Witness, Wm. A. Wright, Comptroller General of said State, under his hand and the seal of said office.

Issued this the 16th day of February, 1912.

WM. A. WRIGHT,
Comptroller General of Georgia.

29 EXHIBIT "C."

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To All and Singular the Sheriffs and other lawful officers of said State:

You are hereby commanded, That of all goods and chattels, lands, tenements and franchises of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of Sixteen thousand two hundred and five and 33/100 Dollars (16,205.33) as its tax for the year 1911, due the State of Georgia, and interest at seven per cent. per annum from December 20th 1911, under and by virtue of the laws of the State of Georgia, providing for the taxation of railroads in this State, for State purposes. The above amount of $16,205.33 is the balance due the State as taxes for the year 1911 on an ad valorem basis on the real estate, road-bed, and franchise value, after crediting said company with one-half of one per cent. of the net income, viz.: $2,188.77, on that portion of its property known in its system of railroads as the Southwestern Railroad, now owned and operated by said Central of Georgia Railway Company, and all lawful costs, and that you pay over said sum of money to the Comptroller General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness, Wm. A. Wright, Comptroller-General of said State, under his official hand and the seal of said office.

Issued this the 16th day of February, 1912.

[SEAL.]

WM. A. WRIGHT,
Comptroller General of Georgia.

30 EXHIBIT "D."

Lease of the Augusta & Savannah Railroad.

This Indenture, made the first day of May in the year of our Lord One Thousand Eight Hundred and sixty-two between the Augusta & Savannah Railroad, formerly the Augusta & Waynesboro Railroad, of the one part, and the Central Railroad & Banking Company of Georgia, of the other part, witnesseth, that, whereas, in and by an act of the General Assembly of the State of Georgia, passed on the 22nd day of January 1852, express authority was granted to the said Central Railroad & Banking Company of Georgia, to lease and work the Augusta & Waynesboro Railroad, and all roads connecting with the Central Railroad, and, whereas, Also it is provided in the charter of the said Augusta & Savannah Railroad, formerly the Augusta & Waynesboro Railroad, that said Company may rent or farm out all, or any part of their exclusive right of transportation of freight or conveyance of passengers to any other Company; and, whereas, The said The Augusta & Savannah Railroad has agreed to lease to the said Central Railroad & Banking Company of Georgia, their railroad, leading and running from Millen to Augusta, with all their locomotive engines, cars and material of any kind and description, and their right to carry freight and passengers, and to collect the money therefor. Said lease to begin the day of the date of these presents, and to run and continue during the whole charter of the said Augusta & Waynesboro and of the said Augusta & Savannah Railroad. That is to say, in perpetuity, at a rent of Seventy-three Thousand Dollars per annum, payable as follows: The rent for the month of May to be paid on the first day of June next, and then semi-annually. The first semi-annual payment to be on the first Monday in December next, the next payment to be on the first Monday in June Eighteen Hundred and Sixty-three, and thereafter on the first Mondays in December and June

Now this Indenture witnesseth, that the said The Augusta & Savannah Railroad, formerly Augusta & Waynesboro Railroad, hath leased and let, and by these presents doth lease and let and grant unto the
31 said The Central Railroad & Banking Company of Georgia, all and singular the railroad leading and running from the Central Railroad at Millen to the City of Augusta, together with all the engines, locomotive or stationary cars, repair cars, wells, cisterns, sidings, depots, stations, warehouses, fixtures, rights, members and appurtenances, and privileges of every kind and nature whatsoever.

To have and to hold the said railroad and appurtenances unto the said Central Railroad & Banking Company of Georgia, for, during and until the full term and end of the charter of the Augusta & Waynesboro Railroad, and of the Augusta & Savannah Railroad, that is to say, in perpetuity free and clear of every claim or demand for right of way, for damage or other cause which may at this day exist against the said The Augusta & Savannah Railroad, it being

understood that a forfeiture of the charter for any act or thing done or suffered by the said The Central Railroad & Banking Company of Georgia, shall not terminate the lease or affect the relations of the contracting parties toward each other.

And the said The Central Railroad & Banking Company of Georgia hereby covenants, agrees and promises to pay rent for said railroad and appurtenances, as above let, unto the said Augusta & Savannah Railroad, as follows: The rent for May to be paid on the first of June next, and thereafter, thirty-six thousand five hundred — on the first Monday in December next and a like sum on the first Monday in June eighteen Hundred and sixty-three, and a like sum on every first Monday in December and June during and to the end of this lease, and, further, to grant to the Directors and President of the Augusta & Savannah Railroad, as long as their organization is kept us, free travel between the Cities of Savannah and Augusta, and further, to pay all taxes that may legally be imposed by the Confederate States of America on said railroad leased as aforesaid, the tax imposed by the State of Georgia to be paid by the said The Augusta & Savannah Railroad.

And the said The Central Railroad & Banking Company of Georgia hereby agrees to indemnify the said The Augusta & Savannah Railroad against all claims for loss or damage to stock or to persons during the continuance of this lease.

In witness whereof, the Augusta & Savannah Railroad
32 hath hereto caused to be affixed its corporate seal with the signature of its President, and the said The Central Railroad & Banking Company of Georgia hath caused to be affixed its corporate seal, with the signature of its President, in virtue of resolutions passed for that purpose by the respective Boards of Directors the day and year first above written.

[Seal A. & S. R. R.]

FRANCIS T. WILLIS,
President Augusta & Savannah Railroad.

[Seal C. R. R. & B. Co.]

R. R. CUYLER,
President C. R. R. and Banking Co. of Ga.

Attest:
GEO. N. CUYLER.

33 This Company having leased the Augusta & Savannah Railroad, as evidenced by a deed bearing date May 1st 1862, with the signatures of the President and corporate seal of each Company affixed, the seal of the Central Railroad & Banking Company of Georgia being attested by Geo. A. Cuyler, Ca*h*ier, but neither of the signatures being witnessed in the manner required by law, so as to have the paper duly recorded, and the (then) President and Ca*h*ier of this Company having since departed this life,

Resolved, that the President of this Company be, and he is hereby authorized to make a formal acknowledgment on said lease, in the presence of two witnesses; and when the same shall be properly ac-

knowledged by the Augusta & Savannah Railroad to have it duly recorded in Chatham County, and in the several counties through which the Augusta & Savannah Railroad runs.

I certify the above preamble and resolution to be a true extract from the minutes of this Company of this date.

[SEAL.] T. M. CUNNINGHAM, *Cashier.*

At a meeting of the Board of Directors of the Augusta & Savannah Railroad Company, held January 3rd 1887, the following resolution was offered by Mr. Frank H. Miller and unanimously passed:

Whereas, on the 1st day of May 1862, under authority contained in its charter the Augusta & Savannah Railroad Company, pursuant to the Act of the General Assembly of January 22nd, 1852, leased in perpetuity its railroad to the Central Railroad & Banking Company, which Corporation took possession under the lease and is still in possession of the same;

And, whereas, the said lease was executed without an attesting clause, and has never been placed upon the record of any County through which the road passes, or in which the lessee does business;

Resolved, that the President of the corporation be authorized to re-
acknowledge the execution of said lease in the presence of two
34 witnesses on- of whom shall be a Notary Public or other
judicial officer, and be requested to obtain a similar acknowledgment from the Central Railroad and Banking Company as to its execution of the said lease, and that thereafter the said President of this corporation cause the lease so acknowledged to be recorded in the Counties of Chatham, Burke and Richmond upon the registry of deeds for each of said Counties.

I certify the above and foregoing to be a true extract from the minutes, as above stated

JNO. M. HOGAN, *Secretary.*

Whereas, on the first day of May A. D. 1862, the within indenture of lease was executed and delivered between the Augusta & Savannah Railroad Company of the first part, and the Central Railroad & Banking Company of Georgia of the second part, as will appear by reference to the County Records of Chatham County, Book 4 U's folios 62 and 63, and

Whereas, said lease was not executed in conformity with the Statutes for the registration and recording of such instruments,

Now, therefore, know all men by these presents, that the Augusta & Savannah Railroad Company and the Central Railroad & Banking Company of Georgia, each for itself and on its own behalf, does hereby acknowledge and declare the said lease to be the act and deed of each of them, and does hereby re-execute, sign, seal and deliver the same.

In witness whereof, the said parties have, by virtue of resolutions of their respective Boards of Directors, as hereto attached, caused these presents to be signed by their respective Presidents, and their

corporate seals, properly attested to be hereto affixed this 30th day of June 1887.

THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA,
By E. P. ALEXANDER, *President.*

Attest:

T. M. CUNNINGHAM, *Cashier.*

[Seal of Co.]

35 THE AUGUSTA AND SAVANNAH RAILROAD,
By W. S. LAWTON, *President.*

Attest:

JNO. M. HOGAN, *Secretary.*

[Seal of Co.]

Signed, sealed and delivered in presence of:
Witness- as to E. P. Alexander, President:

A. J. ORME.
DAVIS FREEMAN,
Notary Public, C. C. Ga.

Witness- as to W. S. Lawton, President:

H. H. HULL.
DAVIS FREEMAN,
Notary Public, C. C. Ga

36 EXHIBIT "E."

Lease of Southwestern Railroad.

This indenture, made the twenty-fourth day of June eighteen hundred and sixty-nine, between the Southwestern Railroad Company of the first part and The Central Railroad & Banking Company of Georgia of the second part, both of said parties being corporations under the laws of the State of Georgia.

Whereas, by an Act of the Legislature of the State of Georgia approved the 22nd day of January, A. D. 1852, the said The Central Railroad & Banking Company of Georgia was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, The Southwestern Railroad and such other railroads as then connected, or might hereafter connect with the Central Railroad, and the said The Southwestern Railroad Company was authorized to lease its railroad to the said The Central Railroad & Banking Company of Georgia for such term of time and on such other terms as it might deem best. Now this indenture witnesseth, that the said The Southwestern Railroad Company, for and in consideration of the covenants, conditions and agreements hereinafter set forth, on the part of the said The Central Railroad & Banking Company of

Georgia, to be performed and kept, hath demised, leased and to farm let, and by these presents doth demise, lease and to farm let, all the railroad of the said The Southwestern Railroad Company, leading and running from Macon, in the State of Georgia, to Columbus, Eufaula, Ft. Gaines and Albany in all its branches, as the same is now constructed, and with all the extensions thereof to other points which may hereafter be constructed, including the right of way, roadbed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery and all property whatsoever, real and personal, connected with and appertaining to the said Southwestern Railroad and owned by the said party of the first part, together with the rights, members and appurtenances to the same belonging or in any manner appertaining, unto the said The Central Railroad & Banking Company of Georgia, to have and to hold the same, and every part thereof, with the appurtenances, unto the said party of the
37 second part from the first day of December 1869, for and during the entire continuance of the corporate existence of the said Southwestern Railroad Company under its present charter, or under any amendments or extensions thereof, that may hereafter be made. Until the said first day of December next, the said The Southwestern Railroad Company is to work, manage, and control its said railroad as heretofore, and to receive all the earnings thereof, to pay all debts and claims against it which shall become due before that day whether the same consists of the current and ordinary expenses of the said Company, or of interest on its funded debt, to dispose of the residue of its said earnings for dividends to its stockholders and for other purposes, at its pleasure; to preserve its present permanent property and assets unimpaired and to deliver the same, or account for the proceeds of such part thereof as it may be found necessary to dispose of, to the said The Central Railroad & Banking Company of Georgia, on the day aforesaid, and on that day to give to the said The Central Railroad & Banking Company of Georgia exclusive possession and control of the said Southwestern Railroad and its appurtenances, and all other property of the said party of the first part, and permit it to exercise through its proper officers thenceforth all rights, privileges and control over the same, which the said party of the first part has, or might exercise over and with regard to the same if this demise were not made, except as to the organization of the said party of the first part, and also to receive, control and dispose of all the earnings of the said Southwestern Railroad Company, and to merge the same with the earnings of the said The Central Railroad and Banking Company of Georgia, and to decide what dividends shall be declared therefrom.

And the said The Central Railroad & Banking Company of Georgia hereby covenants and agrees to and with the said The Southwestern Railroad Company, that during the months of June and December in every year during the continuance of the term herein granted, it will declare and pay to the stockholders of the said The Southwestern Railroad Company, dividends which shall bear to the dividends declared and paid to its own stockholders the ratio of eight

to ten—that is to say eight dollars to each share of Southwest-
38 ern Railroad stock for every ten dollars declared and paid to each share of its own stock, and that no semi-annual dividend so declared and paid to the stockholders of the Southwestern Railroad Company shall be less than at the rate of seven per cent. per annum on the par value of their stock; and that whenever any stock dividend or division of assets or accumulations, shall be declared, paid or made to the stockholders of the said The Central Railroad & Banking Company of Georgia, a similar dividend or distribution shall be paid and made to the stockholders of the Southwestern Railroad in the same proportion of eight to ten, and that all such dividends and distribution of every sort shall be paid to the stockholders of the Southwestern Railroad Company at Macon and Savannah as the said Company has heretofore paid its dividends, and be free of all taxes to the stockholders.

And the said The Central Railroad & Banking Company of Georgia hereby further covenants and agrees to and with the said The Southwestern Railroad Company, that from and after the first day of December next, it will pay the current expenses incident to the working and management of the said Southwestern Railroad, and all debts and claims against the said The Southwestern Railroad Company, which shall become due after that day; and all bonds and interest upon bonds of said company which shall become due after that day, including the bonds and interest upon the bonds of the Muscogee Railroad Company, which said bonds and interest upon bonds shall be paid on presentation of the said coupons, at the times and places specified therein.

And the said The Central Railroad & Banking Company of Georgia hereby further covenants and agrees to pay the salaries of the President and of the Secretary and Treasurer of the said Southwestern Railroad Company during the continuance of the said lease, reserving to itself the right to fix the amount of the said salaries, with the restriction that the aggregate amount thereof shall not be less than four thousand dollars per annum, and that it will also provide and furnish, at its own expense, all necessary stock, account and transfer books, and all necessary stationery, and offices for the said President and Secretary and Treasurer, and pay all proper expense incident to the meetings of the Board of Directors of the said
39 The Southwestern Railroad Company, and permit the President and Directors and the Secretary and Treasurer of the said Company to travel on both roads free of charge in the same manner as the corresponding officers of the said The Central Railroad & Banking Company of Georgia and that it will provide for the transfer of stock in the said The Southwestern Railroad Company, both at Macon and Savannah, as that Company has heretofore done.

And the said The Central Railroad & Banking Company of Georgia hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of the same the said Southwestern Railroad and its rolling stock and other appurtenances, and to pay all taxes on the property of the said The Southwestern Railroad Company, during the continuance of this lease,

and that in case it shall fail to pay any dividend to the stockholders of The Southwestern Railroad Company, or any bond, or the interest upon any bond within six months after the same shall become due and payable as hereinbefore provided, and be demanded by the person or persons entitled to receive the same: It shall then be lawful for the Board of Directors of the said The Southwestern Railroad Company to terminate this lease, and to enter upon and resume possession of its said railroad with the appurtenances and all other its properties hereby demised, and from thenceforth this indenture and the estate, rights and privileges hereby granted, and every clause and article herein contained shall cease, determine and be void; and the said The Central Railroad & Banking Company of Georgia will thereupon deliver immediate and peaceable possession of the said Southwestern Railroad, its rolling stock and appurtenances and other property herein demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value.

And the said The Central Railroad & Banking Company of Georgia hereby further covenants and agrees to maintain its present permanent property and assets unimpaired in amount and value until the said first day of December next.

And the said The Southwestern Railroad Company hereby covenants and agrees to conform in all its financial operations after the date of these presents to the views and wishes of the Board of Directors of The Central Railroad & Banking Company of Georgia, so far as relates to the present funded debt of the former company in renewing and issuing bonds and otherwise, and that it will contract no new obligations, and create no new incumbrances upon its said railroad or appurtenances, or any other of its property, and make no extensions of its said railroad property without the assets of the Board of Directors of the said The Central Railroad & Banking Company of Georgia.

And both parties hereby covenant and agree to and with each other that they will respectively at any and all times, after the date of these presents, and during the continuance of this lease, make, execute and deliver such other conveyances, transfer and instruments in writing and do such other things as shall be considered by counsel, learned in the law, necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in anywise to affect the corporate character or existence of the said The Southwestern Railroad Company, but that it is to maintain its corporate organization, not only until the first day of December next, but at all times thereafter during the continuance of its charter, whether as now framed, or as it may be hereafter extended or amended, to the fullest extent necessary to preserve its said charter and protect the rights of its stockholders.

In witness whereof the President of the said The Southwestern Railroad Company, being thereunto authorized by resolution of the Board of Directors of said company adopted on the 24th day of June 1869 hath hereunto set his hand and the seal of said company, at-

tested by its secretary, and the President of the said The Central Railroad & Banking Company of Georgia, by virtue of a resolution of the Board of Directors of said company, adopted on the 22nd day of June, A. D. 1869, hath hereunto set his hand and the seal of said company, attested by its Cashier, interchangeably on the day
41 and year first above written.

WM. S. HOLT,
President Southwestern R. R. Co.

Attest:

JOHN T. BOIFEUILLET, *Secretary.*

[Seal of S. W. R. R. Co.]

WILLIAM M. WADLEY,
President Central R. R. & B. Co. of Ga.

Attest:

T. M. CUNNINGHAM, *Cashier.*

[Seal of the C. R. R. & B. Co.]

Signed, sealed and delivered in presence of:
W. S. BRANTLEY.
WM. K. DE GRAFFENREID,
Notary Public, Bibb County, Ga.

Witness to the signatures of Wm. M. Wadley, President, and T. M. Cunningham, Cashier:
GEO. W. LAMAR, JR.
R. W. ADAMS,
Notary Public, C. C., Ga.

42 EXHIBIT "F."

Lease.

Augusta and Savannah Railroad, Central of Georgia Railway Company, Georgia, Richmond Co.

Filed for Record at 4:45 O'clock P. M., Dec. 31st, 1895, and Recorded in Book 49, Folios 22, 23, 24, 25, and 26, J. B. Keener, D. C.

This indenture, made this 24th day of October, one thousand eight hundred and ninety-five, between the Augusta and Savannah Railroad, of the first part, and the Central of Georgi Railway Company, of the second part, both of said parties being corporations under the laws of the State of Georgia.

Whereas, the railroad of the Central Railroad and Banking Company of Georgia was heretofore sold under decree of foreclosure at a certain judicial sale on the seventh day of October, 1895, at the City of Savannah, Georgia.

And whereas, the purchasers and their associates have formed and

created under the General Railroad Law of Georgia, approved December 17th 1892, and the amendments thereto, said corporation so formed by the parties ac- Georgia Railway Company, which has acquired title under such sale to the said railroad of the Central Railroad and Banking Company of Georgia;

And whereas, by the express terms of the said General Railroad Act, approved December 17th 1892, and the amendments thereto, said corporations so formed by the parties acquiring title at said sale is entitled to exercise and enjoy the same rights, privileges, grants, franchises, immunities and advantages which belonged to and were enjoyed by the Central Railroad and Banking Company of Georgia;

And whereas, by an Act of the Legislature of the State of Georgia, approved the 22nd day of January, A. D., 1852, the Central Railroad and Banking Company of Georgia, was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, the Augusta and Waynesboro Railroad (now the
43 Augusta and Savannah) and such other railroads as then connected or might thereafter connect with the Central Railroad and the said Augusta and Waynesboro (now Augusta and Savannah) Railroad was authorized to lease its railroad to the said the Central Railroad and Banking Company of Georgia, for such period of time and on such other terms as it might deem best;

And whereas, on May 1st 1862 the said Augusta and Savannah Railroad executed and delivered under its corporate seal a perpetual lease of all and singular its railroad, appurtenances, equipment and franchises to the said Central Railroad and Banking Company of Georgia under and by authority of the said act of the Legislature of the State of Georgia, of January 22nd 1852, last aforesaid, and that contained in the charter of the said Augusta and Waynesboro (now Augusta and Savannah) Railroad and under which lease said Central Railroad and Banking Company of Georgia, has since hitherto held possession of and operated the said Augusta and Savannah Railroad.

And whereas, The said leasehold estate of the said Central Railroad and Banking Company of Georgia in and to the said Augusta and Savannah Railroad under the said lease aforementioned, has by force of and under judicial proceedings passed to and become vested in the said Central of Georgia Railway Company, party of the second part;

And whereas, The said party of the second part, having become so vested with the said leasehold estate, is desirous to renew the said lease in the manner hereinafter more specifically set forth, to which modification and renewal the said Augusta and Savannah Railroad, party of the first part, has assented and agreed;

And whereas, the party of the second part was organized under and by virtue of the laws of the State of Georgia, and is by its incorporation vested with the charter rights of the original Central Railroad and Banking Company of Georgia, including the powers vested by the Act of January 22nd 1852, as well as all the powers, liberties and franchises granted by the General Railroad Act of De-

cember 17th 1892, and all acts amendatory thereof and supplemental thereto;

Now, this indenture witnesseth: That the said the Augusta and Savannah Railroad, hereinafter called the lessor, for and in
44 consideration of the covenants, conditions and agreements hereinafter set forth on the part of the said The Central of Georgia Railway Company, hereinafter called the lessee, hath demised and to farm-let, and by these presents doth demise, lease and to farm-let, all the railroad of the said lessor, leading and running from Millen to Augusta in the State of Georgia, including the right of way, road-bed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery, and all property whatsoever, real and personal, connected with and appertaining to the said lessor, or owned by the said lessor, together with the rights, members and appurtenances to the same belonging or in any manner appertaining, unto the said lessee.

To have and to hold the *same* and every part thereof, with the appurtenances unto the said lessee from the first day of November, eighteen hundred and ninety-five, for the full term of one hundred and one years, and renewable in like periods upon the same terms forever. The right to renewals shall be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Upon the said first day of November, eighteen hundred and ninety-five, the said lessor shall give to the said lessee exclusive possession and control of the said lessor's railroad and its appurtenances and all other property of the said lessor, and to permit it to exercise through its proper officers henceforth all its franchises and all rights, privileges and control over the same which the said lessor had or might exercise over and with regard to the same if this demise were not made, except as to the organization of the lessor; and also to receive, control and dispose of all the earnings of the said lessor's road and to merge the same with the earnings of the said lessee.

And the said lessee hereby covenants and agrees to and with the said lessor, that during each and every year of the continuance of the term hereby granted, and any and all renewals thereof, it will pay to the said lessor the sum of fifty-one thousand one hundred and forty-five ($51,145) dollars being equal to five per centum upon the amount of the capital stock of the said lessor, now outstand-
45 ing, the first payment hereunder to be made on the first day of January, A. D. 1896 and payments thereafter to be made semi-annually on the first days of January and July in each and every year.

And the said lessee hereby further covenants and agrees to and with the said lessor, that from and after the first day of November, A. D. 1895, it will pay the current expenses incident to the working and management of the said lessor's railroad and all debts and claims against the said lessor company which shall, either by the action of the said lessee, its officers, agents or employees, or by authority or assent of the said lessee, become due; also all

federal, state, county or municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia or of the United States; also all damages to persons or property adjudged or decreed against the lessor as owner of the property and franchises herein demised, including those adjudged or decreed against the lessee which may arise, grow out of or inure from the possession, use or operation of the lessor's property, or any of its rights, privileges or franchises whatsoever; also, to assume, arrange for, pay off and liquidate, without expense *ob* liability of any sort to the lessor, all lawful claims or liabilities whatsoever in suits or actions, now pending against the lessor, or which may at any time hereafter be brought against it for anything done whilst being operated under the lease to the Central Railroad and Banking Company of Georgia dated May 1st 1862, and particularly the suits and actions brought against the lessor in the Circuit Court of the United States for the Southern District of Georgia or in the State Courts of Richmond and Burke Counties, whether brought against the said lessor or the Receiver of the Central Railroad and Banking Company of Georgia, for anything done whilst they or the said Central Railroad and Banking Company of Georgia were operating the road of the said lessor. It is the intention of this contract that the lessor shall have and receive during the period of this lease, and of any and all renewals thereof, the amount of said rental free from and without any deduction whatever. But nothing herein contained shall be con-
46 strued as to make the lessee, or any of its officers, agents or employees, in any way liable or responsible for any indebtedness or liability which may be created by, or arise from the acts of omission or commission of any Director or other officer or employee of the lessor, unless done at the express instance or request or assent of the lessee; but neither party to this contract shall in any manner become liable for the acts of the other party, except in so far as they herein expressly authorize it.

In addition to the amount hereinbefore covenanted to be paid as rental, the lessee will further pay to the lessor an amount to pay the salaries of the President and of the Secretary and Treasurer of the lessor during the continuance of this lease, and all renewals thereof, provided such sums shall not exceed the sum of two thousand dollars in any one year; and further amounts sufficient to provide and furnish to the lessor all necessary stock, account and transfer books, stationery and offices for the President and Secretary and Treasurer and all necessary expenses connected with the transfer of stock of the lessor and the advertisement for and payment of its dvidends and incident to the meetings of the Board of Directors of the lessor, or of its stockholders; and further, that it will give to the President and Directors and to the Secretary and Treasurer of the said lessor, free transportation over the railroads owned or leased by the lessee, in the same manner as free transportation shall be accorded to the corresponding officers of the lessee.

And the said lessee hereby further covenants and agrees to keep

in as good order and repair as when it shall receive possession and control of the same, the said lessor's railroads and other property and appurtenances, and in case it shall fail to pay any semi-annual amount of the rent as hereinbefore fixed, on the first days of January or July in any year for the space of six months after the same shall become due and payable as hereinbefore provided, and be demanded by the lessor, it shall then be lawful for the Board of Directors of the said lessor to terminate this lease and enter upon and resume possession of said railroad with the appurtenances and all other of its property hereby demised, and from henceforth this indenture and the estate, rights and privileges hereby granted and
47 *and* every clause and article herein contained shall cease, determine and be void. And the said lessee will thereupon deliver immediate and peaceable possession to the said lessor of said railroad and other property and appurtenances hereby demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value.

And both parties hereto hereby covenant and agree to and with each other that they will respectively, at any and all times after the date of these presents and during the continuance of this lease and all renewals thereof, make, execute and deliver such other conveyances, transfers and instruments in writing and do such other things as shall be considered by counsel learned in the law necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in any wise to affect the corporate character or existence of the said lessor, but that it is to maintain its corporate organization during the continuance of its charter, whether as now framed or as it may hereafter be extended or amended, to the fullest extent necessary to preserve its charter and protect the rights of its stockholders.

And the lessee hereby expressly covenants to and with the lessor that it will do and perform all things necessary to the maintenance of the franchise of the said lessor and the performance of all its duties, to the State and the public, save and except the maintenance of the organization of the lessor, herein*before* provided for; and that it will not do, or permit to be done, or omit or permit to be omitted, any act or thing necessary to be done by the lessor for the maintenance of its charter and franchise.

It is further agreed that this new contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties hereto, and in all other respects as a substitute for the original lease contract of May 1st 1862, which original contract it is hereby agreed is no longer operative or in existence.

In witness whereof, The President of the said lessor, being thereunto authorized by resolution of its Board of Directors
48 adopted on the 24th day of October 1905, has hereunto affixed the seal of the said corporation and caused the same to be signed by its President and countersigned by its Secretary, and the said lessee has by like resolution of its Board of Directors adopted on the 17th day of October, 1895, hereunto affixed its corporate seal

and caused the same to be signed by its President and countersigned by its Secretary in duplicate the day and year first above written.

A. R. LAWTON, *Pres. A. & S. R. R.*
[SEAL.] H. H. HALL, *Sec. A. & S. R. R.*

Signed, sealed and delivered in the presence of us by the lessor.
WILLIAM H. QUINAN.
MICHAEL T. QUINAN,
Notary Public, Chatham Co., Ga.
M. T. QUINAN, JR.,
Notary Public, Chatham Co., Ga.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By R. L. ANDERTON, JR., *1st Vice-President.*
Attest:
[SEAL.] W. E. FINDLEY, *Secretary.*

Signed, sealed and delivered in the presence of us by the lessee.
W. A. C. EWEN.
WILLIAM H. CLARKSON,
Commissioner for the State of Ga. in New York.

WILLIAM H. CLARKSON,
A Commissioner for the State of Georgia in the State and City of New York.

49 EXHIBIT "G."

Lease for 101 *Years.*

Southwestern Railroad Company, Central of Georgia Railway Company.

October 17, 1895.

This indenture, made the 17th day of October, one thousand eight hundred and ninety-five, between the Southwestern Railroad Company, of the first part, and the Central of Georgia Railway Company, of the second part, both of said parties being corporations under the laws of the State of Georgia.

Whereas, the railroad of the Central Railroad and Banking Company of Georgia was heretofore sold under decree of foreclosure at a certain judicial sale on the seventh day of October, 1895, at the City of Savannah, Georgia.

And whereas, the purchasers and their associates have formed and created under the General Railroad Law of Georgia, approved December 17, 1892, and the amendments thereto, the new corporation known as the Central of Georgia Railway Company, which has acquired title under such sale to the said railroad of the Central Railroad and Banking Company of Georgia;

And whereas, by the express therm of the said Central Railroad Act, approved December 17th, 1892, and the amendments thereto, said corporation so formed by the purchasers acquiring title at said sale is entitled to exercise and enjoy the same rights, privileges, grants, franchises, immunities and advantages which belonged to and were enjoyed by the Central Railroad and Banking Company of Georgia;

And whereas, by an Act of the Legislature of the State of Georgia, approved the 22nd day of January, A. D., 1852, the Central Railroad and Banking Company of Georgia was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, the Southwestern Railroad and such other railroads as then connected or might thereafter connect with the Central Railroad, and the said Southwestern Railroad Company was authorized to lease its railroad to the said Central Railroad and Banking Company of Georgia for such period of time and on such terms as it might deem best;

And whereas, on June 24th, 1869, the said Southwestern Railroad Company executed and delivered under its corporate seal a perpetual lease of all and singular its railroad, appurtenances, equipment and franchises to the said Central Railroad and Banking Company of Georgia, under — by authority of the said act of the Legislature of the State of Georgia of January 22nd, 1852, last aforesaid, under which lease said Central Railroad and Banking Company of Georgia has since hitherto held possession of and operated the said Southwestern Railroad;

And whereas, the said leasehold estate of the said Central Railroad and Banking Company of Georgia in and to the said Southwestern Railroad under the said lease aforementioned has by force of and under judicial proceedings passed to and become vested in the said Central of Georgia Railway Company, party of the second part;

And whereas, the said party of the second part, having become so vested with the said leasehold estate, is desirous to hereby modify and renew the said lease in the manner hereinafter more specifically set forth, to which modification and renewal the said Southwestern Railroad Company, party of the first part, has assented and agreed;

And whereas the party of the second part was organized under and by virtue of the laws of the State of Georgia, and is by such incorporation vested with the charter rights of the original Central Railroad and Banking Company of Georgia, including the powers vested by the Act of January 22, 1852, as well as all the powers, liberties and franchises granted by the General Railroad Act of December 17th, 1892, and all Acts amendatory thereof and Supplemental thereto;

Now, this indenture witnesseth, That the said Southwestern Railroad Company, hereinafter called the lessor, for and in consideration of the covenants, conditions and agreements hereinafter set forth on the part of the said Central of Georgia Railway Company, hereinafter called the lessee, hath demised and to farm-let, and by these presents doth demise, lease and to farm-let, all the

railroad of the said lessor leading and running from Macon, in the State of Georgia, to Columbus, Fort Gaines, Albany, Blakely and Perry, in the State of Georgia, and to Columbia and Eufaula, in the State of Alabama and all its branches, as the same are now constructed, and with the extensions thereof, to other points which may hereafter be constructed, including the right of way, roadbed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery and all property whatsoever, real and personal, connected with and appertaining to the said lessor, or owned by the said lessor, together with the rights, members and appurtenances to the same, belonging, or in any manner appertaining, unto the said lessee.

To have and to hold the same and every part thereof, with the appurtenances, unto the said lessee from the first day of November, Eighteen hundred and ninety-five, for the full term of One hundred and one years, and renewable in like periods upon the same terms forever. The right to renewals shall be in conformity with the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Upon the first day of November, 1895, the said lessor shall give to the said lessee exclusive possession and control of the said lessor's railroad and its appurtenances and all other property of the said lessor, and permit it to exercise through its proper officers henceforth all its franchises and all rights, privileges and control over the same which the said lessor has or might exercise over and with regard to the same if this demise were not made, except as to the organization of the lessor and also to receive, control and dispose of all the earnings of the said lessor's road and to merge the same with the earnings of the said lessee.

And the said lessee hereby covenants and agrees to and with the said lessor that during each and every year of the continuance of the term hereby granted, and any and all renewals thereof, it will pay to the said lessor the sum of Two hundred and fifty-nine thousand, five hundred and fifty-five ($259,555) Dollars, being equal to five per centum upon the amount of the capital stock of the said lessor now outstanding, the first payment hereunder to be made on the first day of January, A. D. 1896, and payments thereafter to be made semi-annually on the first days of January and July in each and every year.

And the said lessee hereby further covenants and agrees to and with the said lessor that from and after the first day of November, A. D., 1895, it will pay the current expenses incident to the working and management of the said lessor's railroad, and all the debts and claims against the lessor company which shall, either by the action of the said lessee, its officers, agents or employees, or by authority or assent of the said lessee, become due; also all federal, state, county or municipal taxes and assessments, ordinary or extraordinary the resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and law of the State of Georgia or of the United States; also all damages to person or property adjudged or decreed against the lessor as owner of the prop-

erty and franchises herein demised, including those adjudged or decreed against the lessee which may arise, grow out of or enure from the possession, use or operation of the lessor's property, or any of its rights, privileges or franchises whatsoever; also to assume, arrange for, pay off and liquidate, without expense or liability of any sort to the lessor, all lawful claims or liabilities, or which may at any time hereafter be brought against it for anything done whilst being operated under the lease to the Central Railroad and Banking Company of Georgia, dated June 24th, 1869, and particularly the suits and actions brought against the lessor in the Circuit Court of the United States, for the Southern District of Georgia, in the Eastern and Western Divisions thereof, in favor of the Farmers' Loan & Trust Company, as Trustee, to foreclose certain so-called triplicate bonds of the lessor and other companies, and also the suit of the Mutual Life Insurance Company and others, holders of the bonds of the Montgomery and Eufaula Railway Company to enforce a guaranty of the lessor. It is the intention of this contract that the lessor shall
51 have and receive during the period of this lease, and of any and all renewals thereof, the amount of said rental free from and without any reduction whatsoever for any portion of said so-called tripartite bonds, or bonds of the Montgomery and Eufaula Railway Company, on which it appears as guarantor, or the interest on them of any of them. But nothing herein contained shall be construed as to make the lessee or any of its officers, agents or employees in any way liable or responsible for any indebtedness or liability which may be created or arise from the acts of omission or commission of any director or other officer or employee of the lessor unless done at the express instance or request or assent of the lessee; but neither to this contract shall in any manner become liable for the acts of the other party, except in so far as they herein expressly authorize it.

In addition to the amount hereinbefore covenanted to be paid as rental, the lessee will further pay to the lessor an amount to pay the salaries of the President and of the Secretary and Treasurer of the lessor during the continuance of this lease and all renewals thereof, provided such sums shall not exceed the sum of Twenty-five hundred ($2,500) dollars in any one year; and further amounts sufficient to provide and furnish to the lessor all necessary stock, account and transfer books, stationery and offices for the President and Secretary and Treasurer, and all necessary expenses connected with the transfer of stock of the lessor and the advertisement for and payment of its dividends and incident to the meetings of the Board of Directors of the lessor, or of its stockholders; and, further, that it will give to the President and Directors, and to the Secretary and Treasurer, of the said lessor, free transportation over the railroads owned or leased by the lessee, in the same manner as free transportation shall be accorded to the corresponding officers of the lessee.

And the said lessee hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of the same, the said lessor's railroads and other property and

appurtenances; and in case it shall fail to pay any semi-annual amount of the rent as hereinbefore fixed on the first days of January or July in any year for the space of six months after the same shall become due and payable as hereinbefore provided, and be demanded by the lessor, it shall then be lawful for the Board of Directors of the said lessor to terminate this lease and enter and resume possession of said railroad with the appurtenances and all other of its property hereby demised, and from thenceforth this indenture and the estate, rights and privileges hereby granted, and every clause and article herein contained shall cease, determine and be void. And the said lessee will thereupon deliver immediate and peaceable possession to the said lessor of said railroad and other property and appurtenances hereby demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value.

And both parties hereto hereby covenant and agree to and with each other that they will respectively, at any and all times after the date of these presents and during the continuance of this lease and all renewals thereof, make, execute and deliver such other conveyances, transfers and instruments in writing, and do such other things as shall be considered by counsel learned in the law necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in any wise to effect the corporate character or existence of the said lessor, but that it is to maintain its corporate organization during the continuance of its charter, whether as now framed or as it may hereafter be extended or amended, to the fullest extent necessary to preserve its charter and protect the rights of its stockholders. And the lessee hereby expressly covenants to and with the lessor, that it will do and perform all things necessary to the maintenance of the franchise and of the said lessor and the performance of all its duties to the State and the Public, save and except the maintenance of the organization of the lessor hereinbefore provided for; and it will not do or permit to be done or omit or permit to be omitted any act or thing necessary to be done by the lessor for the maintenance of its charter and franchises.

52 It is further agreed that this modified and renewed contract of lease shal- operate and be taken as to the powers, duties and liabilities of the parties thereto and in all other respects in substitution for those contained in the original lease contract of June 24th, 1869, the said powers, duties and liabilities of which original contract it is hereby agreed are no longer operative or in existence, except as herein expressly provided.

In witness whereof, the President of the said lessor being thereunto authorized by resolution of its Board of Directors, adopted on the 31st day of October, 1894, has hereunto affixed the seal of the said corporation and caused the same to be signed by its President and countersigned by its Secretary, and the said lessee has by like resolution of its Board of Directors, adopted on the 17th day of October, 1895, hereunto affixed its corporate seal and caused the same to

be signed by its Vice-President and countersigned by its Secretary in duplicate the day and year first above written.

THE SOUTHWESTERN RAILROAD CO.,
By R. T. WILSON, *President.*
W. S. BRANTLEY, *Secretary.*

[Companys Seal.]

Signed, sealed and delivered in the presence of us,
W. A. C. EWEN.
ALFRED C. JOPLING.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By R. L. ANDERTON, JR., *First Vice-President.*

[Co.'s Seal.]

Attest:

W. E. FINDLEY, *Secretary.*
WILLIAM H. CLARKSON,
Commissioner for the State of Georgia in New York,
Office No. 115 Broadway, New York City

[Comm'r's Seal.]

53 *Defendant's Demurrer.*

In the District Court of the United States for the Northern District of Georgia. In Equity.

THE CENTRAL OF GEORGIA RAILWAY CO.
vs.
WM. A. WRIGHT, Comptroller-General.

And now, not confessing any of the matters alleged in the bill of complaint to be true, comes the defendant William A. Wright and demurs to the same:

1. Because said bill is without equity, and sets forth no good cause for the grant of the relief prayed.

2. The bill shows upon its face that the complainant is the owner for the time being, though on condition subsequent, of the property sought to be taxed, and that it is liable under the Constitution and laws of Georgia to ad valorem taxation thereon.

3. The last sentence but one of paragraph 14 of the bill alleging a decision of the Supreme Court of Georgia reported in 54*b* Georgia Reports p. 401 is demurred to because the same appears to be res inter alios acta, and irrelevant. If intended to be pleaded as res judicata, it is further demurred to because no copy of the record so urged as an estoppel is exhibited.

4. Those portions of paragraph 15 of the bill referring to decisions of the Supreme Court of Georgia reported in 54 Georgia Reports p. 40, and 64 Ga. Rep. p. 783, and of the Supreme Court of the

United States reported in 92 U. S. p. 676 and 116 U. S. 231, are demurred to as res inter alios acta, and irrelevant in this case. If urged as res judicata, they are further demurred to because no copies of the records so urged are exhibited.

5. Paragraph 25 of the bill is demurred to because *the* sets forth no matter showing a good cause of complaint against defendant, and because the facts therein alleged constitute no estoppel or reason why the taxes assessed should not be collected.

Wherefore defendant prays the judgment of the court whether he should be required to answer the said bill, and the portions
54 thereof specially demurred to, and prays to be hence dismissed with his costs.

T. S. FELDER,
Att'y Gen'l.
JNO. C. HART,
Special Counsel.
SAM'L H. SIBLEY,
Of Counsel.

I, Jno. C. Hart of counsel for defendant in the above stated case do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

JNO. C. HART.

UNITED STATES OF AMERICA,
Northern District of Georgia:

I, William A. Wright, defendant in the above case, being duly sworn do say that the foregoing demurrer is not interposed for the purpose of delay.

WM. A. WRIGHT,
Comp. Gen'l.

Sworn to and subscribed before me this April 16th, 1912.
W. H. HARRISON,
Notary Public, Fulton Co., Ga.

Filed in Clerk's Office May 4th 1912.
O. C. FULLER, *Clerk.*

55 *Defendant's Answer*

In the District Court of the United States, Northern District of Georgia. In Equity.

THE CENTRAL OF GEORGIA RAILWAY CO.
vs.
WM. A. WRIGHT, Comptroller-General.

And now subject to his demurrer of file, and not waiving but relying thereon, comes the defendant William A. Wright, and for answer to so much of the bill as he is advised is material says:

1. The allegations of paragraph 1 are true.
2. The allegations of paragraph 2 are true.
3. The allegations of paragraph 3 are true, to the extent that the statutes and laws of Georgia, which speak for themselves, clothe the defendant with the right and power to act for and represent the State and its political subdivisions, but not further.
4. Paragraph 4 is admitted to be true.
5. The allegations of paragraph 5 are true.
6. In answer to paragraph 6, it is admitted that tax executions were issued as alleged, and the original amounts thereof ascertained as stated. It is denied that the credits entered thereon was an income tax paid to the State of Georgia on the Augusta and Savannah Railroad, and on the Southwestern Railroad respectively under their charters. On the contrary the complainant was, long before said payments, notified by defendant that said railroads would be assessed and taxed on an ad valorem basis and not on an income basis, as required by the constitution and laws of Georgia, and had been required to make returns on said basis, and such returns had been made and accepted by defendant, when a few days before the actual issuance of fi. fas, far said ad valorem taxes thre amounts entered as credits were paid into the State Treasury. The same were accepted not as an income tax, but were accepted and credited as so much paid upon the ad valorem taxes claimed by the State to be due it as aforesaid.

Par. 7 is admitted to be true.

8. The allegations of paragraph — are admitted to be true.
56 Defendant believes it to be his official duty under the Constitution and laws of the State, if he has accepted from Complainant in the past a less sum of taxes upon its property aforesaid than was due thereon, to institute proceedings to collect the true amount due for each year not barred by the statute of limitations.

9. The allegations of paragraph- 9 & 10 are believed to be true.
11. The allegations of Par. 11 are believed to be true. He denies however that any right to exercise and enjoy the special charter immunities of the Augusta and Savannah Railroad Co. or the Southwestern Railroad Company in respect of the taxation of the railroads the leasehold interest in which was so sold to Thomas and Ryan, passed to said purchasers at said judicial sale, because said sale occurred at a time when the Constitution of Georgia of 1877 was in force prohibiting any special immunities in respect of corporate taxation, and no department of the state government could consent to the transfer thereof; nor did any department of government attempt so to do. Said charter immunities being personal to the corporations to which they were granted, did not and could not vest in said Thomas and Ryan.

12. Defendant admits that Thomas and Ryan as purchasers of the assets of the Central Railroad and Banking Company, with their associates, were incorporated under the Act of Dec. 17 1892, and that said corporation so created, being the complainant in this case, had power to lease and work the railroads connecting with the roads of the Central Railroad and Banking Company, including the South-

western Railroad, and the Augusta and Savannah Railroad; but denies that said new corporation acquired any immunity from or right of limited taxation enjoyed either by the Central Railroad and Banking Company, or the Southwestern Railroad Company, or the Augusta and Savannah Railroad Company; because the Constitution of the State at said time expressly forbade same, and said Act of Dec. 17, 1892 in express terms declared: "Provide- that nothing in this Act contained shall be construed to reserve any exemption from taxation, either State municipal or county, or any special rights, privileges and immunities that are not herein authorized to be granted to each and all railroads alike in conformity with the present Constitution of Georgia." Code 1895 Sect. 2167 (11.)

13. The allegations of Par. 13 are admitted to be true, save
57 that defendant is advised that said leases under the terms thereof were not modifications or renewals of previous leases, but were by their express terms substitutions for said prior leases.

14. It is admited that the Augusta and Waynesboro Railroad Company was chartered by an*d* act of the Legislature of Georgia approved Dec. 31, 1838, and that its name was altered to the Augusta and Savannah Railroad Company as alleged, and that said charter in its 13th section contained the provision as to taxation quoted. It is further admitted that said provision was an irrepealable contract between the State of Georgia and said Augusta and Waynesboro Railroad Company. It is however denied that said contract or the benefit thereof passed to the Central Railroad and Banking Company with said alleged lease of the Augusta and Savannah Railroad, or with the subsequent lease of said railroad to the Central of Georgia Railway Company, the same being personal to the Augusta and Savannah Railroad Company, and not passing with its property, or assignable or transferable by said company, without the express and unmistakable consent of the State of Georgia, and at a time when its Constitution permitted such consent.

15. The allegations of Paragraph 15 as to the Acts chartering the Muscogee Railroad Company, and the Southwestern Railroad Company, and authorizing the consolidation thereof; and as to the lines or railroad built under said acts, are admitted to be true. It is admitted that the contracts in the respective charters referred to are irrepealable by the State of Georgia, as between it and said original corporations. It is denied that the benefit of said contracts passed with said railroads to the Central of Georgia Railway Company, or the Central Railroad and Banking Company, or that either of said last named companies could take any benefit thereunder; but said contracts were personal to the original corporations to whom they were granted, and were not assignable or transferable to any other without the express consent of the State of Georgia, and at a time when its Constitution permitted such consent.

16. The allegations of Paragraph 16 are true.

17. The allegations of Paragraph 17 are admitted, save that the lines of railroad designated as "exempt" are really exempt, which is denied. The acceptance heretofore by defendant of taxes on said

railroads claimed to be exempt on a basis of the income, was
58 in oversight of their true status as taxable property, and by mistake in reference thereto.

18. The allegations of Paragraph 18 are true as to years prior to 1911, and income tax having been returned and paid to the State for said years by oversight and mistake as aforesaid. For the year 1911 a return of the Augusta and Savannah Railroad for ad valorem taxation was demanded and made, and the amount paid was received and credited as a part of the ad valorem tax due, as fully set out in Par. 6 of this answer.

19. Paragraph 19 is admitted to be true.

20. The allegations of Par. 20 that the complainant holds the railroads sought to be taxed against it under and by virtue of the leases to it exhibited in the petition are admitted. The allegations that complainant is not now and never has been the owner of the property sought to be so taxed, and that the Augusta and Savannah Railroad Company and Southwestern Railroad Company are the owners in fee simple of said property are denied. Under and by virtue of the said leases exhibited in the petition complainant is the owner of said property for the purposes of taxation, having an estate therein, and the perpetual and exclusive right of possession and enjoyment of said property, subject to defeat on condition subsequent only by the nonpayment of the annual amount stipulated for under the name of rent. The interest of the defendant in said property is such as affords it the reception of the rents and profits of said property in perpetuity, with the exclusive possession and enjoyment thereof, and constitutes complainant the owner thereof for the purposes of taxation, at least for the time being.

21. The allegations of paragraph 21 are denied. The property sought to be taxed is not taxable to the Augusta and Savannah Railroad Company and the Southwestern Railroad Company at all but the same is taxable to the complainant as other property is taxed under the Constitution and laws of Georgia; and to require the Complainant to pay ad valorem taxes thereon is not a denial of the equal protection of the laws, but is an equal enforcement of the laws, and does not deprive complainant of its property without due process of law, but exacts of complainant payment of its just share of the burdens of government according to the law.

59 22. The allegations of Paragraph 22 are denied. The assessment and taxation of the property in dispute was based on the valuation thereof as returned by the complainant, and accepted by defendant. Defendant understands the complainant to be the "owner" of the property within the meaning of the tax laws, and accepted the return as a fair return of the value of complainant's ownership. He denies the existence of any plan or scheme to deprive complainant by indirection of the equal protection of the laws, or to deprive it of its property without due process of law.

23. Paragraph 23 is denied as alleged. It is true that the statutes of Georgia require property to be taxed to the owner if known, and that the specific property be proceeded against if the owner be unknown. But said statutes do not thereby mean the holder of the

fee simple title, nor the title in reversion or remainder, but one who is in possession and enjoying the use and profits of the property, under perpetual leases such as are held by complainant, is the owner within the meaning of said statutes, though there be a reversion on condition subsequent to another. It is true that the Augusta and Savannah Railroad Companies and Southwestern Railroad Company were known to defendant to be the owners of a reversion on the happening of an uncertain condition subsequent, of the property in question, but it is denied that they are or were the owners of said property for the time being within the meaning of the tax laws. The effort of defendant to tax said property to the complainant is not a deprivation by him of complainant of its property without due process of law, nor a denial of the equal protection of the laws contrary to the Constitution of the United States.

24. It is denied that the property mentioned in the executions issued is exempt from ad valorem taxation in the hands of complainant, though the charters of the Augusta and Savannah and Southwestern Railroad Companies be irrepealable contracts with the State of Georgia. It is denied that the payment of such taxes as have been paid by complainant of said property relieved them from any further taxation. Defendant, while considering the rights of complainant and the original owners of said property as between themselves irrelevant, denies that complainant is liable to the said
60 original owners for the additional taxes, but avers that it is liable to the State of Georgia and its political divisions therefor. Whether the provisions of the charters of said original owners were considered in making said leases this defendant cannot say, but he denies that any provision of said charters limiting taxation on said property entered into and became a part of any contract between complainant and said Augusta and Savannah Railroad Company and Southwestern Railroad Company so as to effect the right of the State to tax said property in the hands of complainant, because, while the state authorized the making of the leases, it did not and could not at the date of said leases consent to any transfer or extension to complainant of the contracts as to taxation contained in the charters of the lessors.

Defendant is advised that the executions issued against the complainant for taxes on the Augusta and Savannah Railroad and on the Southwestern Railroad are a lien on all the property of complainants, and are a lien on such interest and title as the complainant has in said railroads, but is not a lien on them further or otherwise.

It is admitted that defendant is proceeding under the Acts of the General Assembly approved Feb. 28, 1874, and codified in Sections 1032 et seq. of the Code of 1910. He regards as relevant to the questions raised the sections of the Constitution of the State of Georgia quoted, as also the provision of Article 1 Sect. 3, Par. 2, that No * * * law * * * making irrevocable grants of special privileges or immunities shall be passed." He also regards as relevant the section of Code of 1895 778 quoted in the petition, but denies that it first became law when codified in 1895, having been taken

from previous decisions of the Supreme Court of Georgia so declaring the law.

It is admitted that said laws and Constitution were passed and adopted after the grant of the charters of the Augusta and Savannah Railroad Company and of the Southwestern Railroad Company and after the Act of 1852, but it is denied that the same in any way impair any contract with said companies, or offend against the provision of the Constitution of the United States which prohibits such impairment, because:

No tax is sought to be imposed upon either of said companies contrary to its charter. The only tax imposed is on complainant.

No contract between the State and any one was made by the Act of 1852 permitting the Central Railroad and Banking Company
61 to make leases, but the same was a bare permission, without any consideration moving to the State. Nor did said Act contain any consent on the part of the State to any transfer or extension to the Central Railroad and Banking Company of any special immunities as to taxation enjoyed by any company whose road was to be leased.

Had the State so consented, and had such special immunities been enjoyed of right by the said Central Railroad and Banking Company, the same did not pass to Thomas and Ryan by the judicial sale at which they became purchasers of the leasehold interests held by said Central Company, said immunities not being vendible, and the State not having consented expressly to any transfer or extension thereof to Thomas and Ryan.

When complainant became incorporated under the Act of 1892, said Constitution and laws were in full force and effect, and the Government of the State had no power to create a corporation that could receive any irrevocable grant of any special privilege or immunity, nor could said government "in any manner give, grant, limit or restrain" the sovereign right of taxation; and the very act authorizing said incorporation of complainant expressly provided that it should not receive any exemption from taxation either State, municipal or county, or any right privilege or immunity not authorized by the Constitution of Georgia to be granted to all railroads alike; so that the old leases of the Central Railroad and Banking Company could in no case have vested any such exemption or special immunity in complainant.

The new leases negotiated by complainant in substitution of said old ones were themselves made long since the passage of said laws and the adoption of said Constitution. While the Act of 1892 authorized complainant to make leases of railroads, it did not authorize, but prohibited, as did the Constitution, the acquirement or exercise by complainant of any exemption from taxation or special immunity thereabout. Said leases did not attempt to create or transfer any such immunity, nor did the State attempt to make any contract thereabout in connection with said leases at any time.

Wherefore defendant says that complainant has neither any original or transferred contract with the State which it can invoke in any manner to limit the just exercise of the State's power of taxation.

25. Defendant admits that the relations of complainant to
62 the Augusta and Savannah Railroad Company and Southwestern Railroad Company and to the property sought to be taxed are the same that they have been since 1895. He denies that they are the same as were sustained by the Central Railroad and Banking Company prior to 1892. He admits that he has for a long period of years known of the lease of said railroads by complainants, but as before stated, in oversight and by mistake has treated the charters of said companies as still applicable to the taxation of said railroads. He denies that since *since* 1895 and up to 1911 said railroads were returned for taxation by the Southwestern Railroad Company and Augusta and Savannah Railroad Company, and taxes paid by them, but avers the property was returned by the complainant and the taxes paid by it, on an income basis as aforesaid, and as being the true amount of taxes due on said property, on a mistaken apprehension as aforesaid that said property was not subject to ad valorem taxation. Defendant however denies that under the Constitution and laws of the State that his mistake of law would operate to relieve complainant of paying such taxes as it lawfully owed and avers that under said laws no act or contract of his whereby any tax payer was relieved or exempted from the payment of his lawful taxes would operate to the prejudice of the State, defendant having no power to accept less taxes than are due by any tax payer, and having no power to relieve any property from the payment of an ad valorem tax if it is lawfully subject thereto.

He denies that any county or municipality received any portion of the taxes so paid prior to 1911, but the whole amount paid was received by the State.

The amount paid in 1911 was paid and accepted as set out in Par. 6 of this answer.

26. It is admitted that if the executions referred to in the petition are invalid, that they becloud the title of complainant.

27. And defendant having fully answered shows to the court that he should not be enjoined from collecting ad valorem taxes upon the property mentioned in the petition, but should be permitted by this honorable court to proceed to assess and collect such taxes from the complainant without further interference.

And he prays to be hence discharged, with his costs in this behalf expended.

63 T. S. FELDER,
Attorney General.
JNO. C. HART,
SAM'L H. SIBLEY,
Of Counsel for Def't.

UNITED STATES OF AMERICA,
Northern District of Georgia:

You William A. Wright, defendant in the above case, do solemnly swear that the foregoing answer, so far as it concerns your act and deed is true, and so far as it concerns the act and deed of others you believe it to be true so help you God.

WM. A. WRIGHT,
Comp. Gen'l.

Sworn to and subscribed before me this Ap'l 16th, 1912.
[SEAL.] W. H. HARRISON,
Notary Public, Fulton Co., Ga.

Filed in Open Court Nov. 11th 1912.
O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

64 In the District Court of the United States for the Northern District of Georgia. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of the State of Georgia.

Agreement of Counsel.

It is agreed that this cause shall, by agreement of Counsel, be heard on bill and demurrer and answer, supplemented by the following facts:

In the spring of each year, the income tax returns of Southwestern Railroad Company and Augusta & Savannah Railroad were made at the time required by law on blank forms furnished by the Comptroller General in the names of and as the returns of these two lessor corporations respectively, but were sworn to by a Vice-President of Central of Georgia Railway Company; that by December 1st of each year the Comptroller General sent to the Central of Georgia Railway Company a statement of the amount of income tax due on these returns and the same was annually paid to the State Treasurer by Central of Georgia Railway Company on or before December 20th. In 1911, such return was made as usual and such notice of the amount of taxes due as income tax was given as usual.

The income taxes on these leased lines were actually paid on or before December 20, 1911, by voucher of Central of Georgia Railway Company to the State Treasurer, which included among other taxes due the State these items: (Income) Southwestern Railroad, valuation $437,755 at 5 mills $2,188.77; Augusta & Savannah Railroad, valuation $87,592 at 5 mills, $437.96.

The first demand of the Comptroller General for the payment of ad valorem taxes now in dispute was by his letter of November 21, 1911, set out in paragraph 4 of the Bill. The return under protest was made December 16, 1911, and the executions were issue- February 16, 1912.

November 11, 1912.

LAWTON & CUNNINGHAM,
LITTLE & POWELL,
Solicitors for Complainant.

65 T. S. FELDER, *Att'y Gen.;*
JNO. C. HART,
SAM'L H. SIBLEY,
Of Counsel for Def't.

Filed in Open Court Nov. 11th, 1912.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy*.

66 In the District Court of the United States for the Northern District of Georgia.

No. 29. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of the State of Georgia.

Opinion of Court.

This case involves the right of the Comptroller General of the state of Georgia to assess ad valorem taxes against the Augusta & Savannah and the Southwestern railroads as the property of the Central of Georgia Railway Company.

The Augusta & Savannah Railroad was originally chartered as the Augusta & Waynesboro, its name having been changed in 1856 by an act of the Legislature. Under the original charter dated December 31st 1837, it was enacted (Sec. 13):

"That the said railroad and the property of said Company shall not be subject to be taxed higher than one-half of one per cent. on its annual income; and no city or town corporation shall have power to tax the stock of said company, but may tax any property, real and personal, of said company within the jurisdiction of said city or town, in the same ratio of taxation of like property."

The Southwestern Railroad Company was chartered by an act of the General Assembly in 1845. In that act (Sec. 14) it was provided:

"That said railway, and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its annual net income."

By an act of the Legislature of Georgia, approved January 22nd 1852, the Central Railroad & Banking Company of Georgia, the Augusta & Savannah Railroad (then known as the Augusta & Waynesboro Railroad) and the Southwestern Railroad Company were authorized to enter into leases of the two last named railroads to the former. The act is entitled "An Act to authorize the
67 Central Railroad & Banking Company of Georgia to lease and work such railroads as now connect, or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have or may hereafter have their respective railroads connecting with the said Central Railroad to make leases thereof for a term of years, or during the continuance of their respective charters."

The Augusta & Savannah Railroad was leased to the Central Railroad & Banking Company of Georgia by an instrument dated

May 1st 1862. The language of the lease, so far as material for the purpose now in mine, is as follows:

"That, whereas, in and by an act of the General Assembly of the State of Georgia, passed on the 22nd day of January, 1852, express authority was granted to the said Central Railroad & Banking Company of Georgia, to lease the Augusta & Waynesboro Railroad, and all roads connecting with the Central Railroad and, whereas, Also it is provided in the charter of the said Augustus & Savannah Railroad, formerly the Augusta & Waynesboro Railroad, that said Company may rent or farm out all, or any part of their exclusive right of transportation of freight or conveyance of passengers to any other Company; and, whereas, The said The Augusta & Savannah Railroad has agreed to lease to the said The Central Railroad & Banking Company of Georgia, their railroad, leading and running from Millen to Augusta, with all their locomotive engines, cars and material of any kind and description, and their right to carry freight and passengers, and to collect the money therefor. Said lease to begin the day of the date of these presents, and to run and continue during the whole charter of the said Augusta & Waynesboro and of the said Augusta & Savannah Railroad. That is to say, in perpetuity, at a rent of Seventy-three Thousand Dollars per annum, payable as follows: "Annually"

"Now this indenture witnesseth, that the said The Augusta & Savannah Railroad, formerly Augusta & Waynesboro Railroad, hath leased and let, and by these presents doth lease and let and grant unto the said The Central Railroad & Banking Company of Georgia all and singular the railroad leading and running from the Central Railroad at Millen to the City of Augusta, together with all the engines, locomotive or stationary, cars, repair cars, wells, cisterns, sidings, depots, stations, warehouses, fixtures, rights, members and appurtenances, and privileges of every kind and nature whatsoever."

68 The language of the lease of the Southwestern Railroad to the Central Railroad & Banking Company, entered into in writing on June 24th 1869, so far as material here, after reciting that the same was made in accordance with the act of January 22nd 1852, authorizing the making of the lease, is as follows:

"That the said The Southwestern Railroad Company for and in consideration of the covenants, conditions and agreements hereinafter set forth, on the part of the said The Central Railroad & Banking Company of Georgia, to be performed and kept, hath demised, leased and to form let, and by these presents doth demise, lease and to farm let all the railroad of the said The Southwestern Railroad Company, etc."

The consideration for this lease is that the Central Railroad & Banking Company will declare and pay to the stockholders of the said Southwestern Railroad Company dividends "which shall bear to the dividends declared and paid to its own stockholders the ratio of eight to ten—that is to say eight dollars to each share of Southwestern Railroad stock for every ten dollars declared and paid to each share of its own stock, and that no semi-annual dividend so de-

clared and paid to the stockholders of the Southwestern Railroad Company shall be less than at the rate of seven per cent. per annum on the par value of their stock—and that whenever any stock dividend or division of assets or accumulations shall be declared, paid or made to the stockholders of the said Central Railroad & Banking Company of Georgia a similar dividend or distribution shall be paid and made to the stockholders of the Southwestern Railroad in the same proportion of eight to ten, and that all such dividends and distributions of every sort shall be paid to the stockholders of the Southwestern Railroad Company at Macon and Savannah, as the said Company has heretofore paid its dividends, and be free from all taxes to the stockholders."

It further provides as follows:

"It is understood that nothing herein contained is in anywise to affect the corporate character or existence of the said The Southwestern Railroad Company, but it is to maintain its corporate or-
69 ganization, not only until the first day of December next, but at all times thereafter during the continuance of its charter, whether as now framed, or as it may be hereafter extended or amended, to the fullest extent necessary to preserve its said charter and protect the rights of its stockholders."

In considering the effect of the language of the leases from these companies respectively to the Central Railroad, and what relation was created between the lessors and the lessee, we may compare the language of these leases with that of the Georgia Railroad & Banking Company to William M. Wadley, predecessor in interest of the Louisville & Nashville Railroad Company and the Atlantic Coast Line Railway Company. The language of the Georgia Railroad & Banking Company's lease, which was under consideration in the case of Louisville & N. R. Co., v. Wright, 199 Fed. 454, is as follows:

"hath rented and farmed out to said party of the second part and his assigns, and does by these presents rent and farm out to said party of the second part and his assigns for the full term of ninety-five years from the first day of April, one thousand eight hundred and eighty-one, all its privileges, general and exclusive, of transporting persons, merchandise, produce and every kind of property whatsoever, which is or may become the subject of railroad transportation, over the lines of railroad owned and controlled by the party of the first part, to the full extent that the party of the first part has and enjoys, or is now entitled to have and enjoy, or may hereafter acquire the right to have and enjoy such privileges, and subject to all the obligations and duties, imposed by its charter in this behalf upon the party of the first part.

"And the party of the first part has also rented and farmed out, and does by these presents rent and farm out to the party of the second part for the aforesaid term of ninety-nine years, as the means of full enjoyment of the privileges hereinbefore rented and farmed out, the following property, to wit:

"The Georgia Railroad from Augusta to Atlanta, and its branches, viz.: The branch from Barnett to Washington; the branch from Camak to Warrenton, and the branch from Union Point to Athens,

with all the extensions thereof which may be made hereafter to other points; also the Macon & Augusta Railroad, from Warrenton to Macon; together with the rights of way, roadbeds, depots, stations, warehouses, elevators, workshops, wells, cisterns, water tanks and other appurtenances of said railroad and branches."

70 It is conceded that it has been held by the Supreme Court of Georgia in the case of the Augusta & Savannah Railroad, and by the Supreme Court of the United States in the case of the Southwestern Railroad Company, that the provisions in the charters of these companies with reference to taxation, as given above, constitute inviolable and irrepealable contracts between the state and the railroads. Railroad v. State of Ga., 54 Ga. 401; Railroad Co. v. Georgia, 92 U. S. 676.

The case of the Louisville & N. R. Co. v. Wright, supra, was carried by appeal from this court to the Circuit Court of Appeals for this Circuit, and the decision of the District Court was affirmed

The effect of the lease by the Augusta & Savannah Railroad and the Southwestern Railroad Company of their property to the Central Railroad & Banking Company on their right to have the scheme of taxation provided for in their charters continued to them and thereby exempt them from any other taxes, this case of the Louisville & N. R. Co. v. Wright should be controlling here. It was there held that the lessee did not take any estate for years but came within the statute of Georgia creating the relation of landlord and tenant and became tenant with the mere right of possession, use and operation, any taxable interest or other estate subject to taxation remaining in the lessor. There was, in the Georgia Railroad case, certain property which, it was held, did not come within the ruling thus made, but that would not affect the question here.

There is no material difference between the language used in the Georgia Railroad & Banking Company's lease and the leases now under consideration sufficient to differentiate the latter from the former, so that it may be assumed that the relationship originally existing, after the execution of these leases, between the lessors and lessee in the case now before the court, was the same which it has been held by this court and the Circuit Court of Appeals existed be-

71 tween the lessor and lessee of the Georgia Railroad.

In addition to this, the question of the effect of the lease of the Augusta & Savannah Railroad was before the Supreme Court of Georgia in Goldsmith, Comptroller General v. Augusta & S. R. Co. 62 Ga. 468, and in that case the court held, the opinion being by Jackson, Justice, as follows (p. 472):

"It is said, however, that the road is leased to the Central Railroad for a certain sum and that this sum is the gross income—the only income that the company receives, and therefore the gross income. The act authorizing the lease does not touch taxation. The state does not alter its power to tax as in the charter expressed. Can the two companies alter that rule of taxation fixed in the charter of one of them without the state's assent? Clearly not, for then they might reduce it to a mere nominal sum and fritter away the tax rate reserved in the charter to little or nothing. The security for the tax

due the state is this road and its appurtenances; the tax reserved is the per centum on its gross income; that income is what passage money and freights this road makes each year; of that an account must be rendered and on that the per cent. must be estimated."

This case went off in the Supreme Court on the ground that the Superior Court had no jurisdiction to entertain the affidavit of illegality, but the language of the Court is quoted to show the view it apparently entertained, that the lease of the road did not affect the question of taxation.

In Goldsmith, Comptroller General v. Southwestern Railroad Co. 62 Ga. 495, while the case went off on the ground that no proper return had been made by the railroad such as required by the act of 1874 as a condition precedent to remedy by affidavit of illegality in the Superior Court, and that the court had no jurisdiction to entertain such an affidavit, the opinion of the presiding judge in the Superior Court is quoted in the decision as follows:

"This case having been referred to me, by consent, for determination upon the law and facts, it is, after argument, considered and adjudged that the partial immunity from taxation granted in the charter of the Southwestern Railroad Company, as well as that to the Muscogee Railroad Company, in its charter, continues unaffected by merger or lease. I further hold that the extent of this immunity has not been decided by the supreme court, but is still an open question."

72 The use of the last sentence by the court refers to the matter, undetermined at that time, as to what particular lines of the Southwestern Railroad this partial immunity from taxation covered.

In the case of Wright, Comptroller General v. Southwestern R. Co., 64 Ga. 782, the Court, again speaking through Jackson, Justice, said (p. 794):

"We hold that it (the Southwestern Railroad) had the right of relief in equity. First, because exactions are pressed upon it, in the form of annual taxes, inconsistent with and violative of its charter rights, and destructive of its franchise; secondly, because the executions might be repeated if these are successful, and suits and costs multiplied."

In the opinion in this last case reference is made to the fact that there is a lease by the Central Railroad & Banking Company of the Southwestern Railroad, and it is said that, while the Central Railroad & Banking Company may be bound by its contract with the Southwestern Railroad Company to pay the taxes, still that does not release the Southwestern from its obligation to the state for those taxes.

The conclusion must be that, prior to the receivership proceedings, instituted in 1892, in the Circuit Court of the United States for the Southern District of Georgia, the right to the limited scheme of taxation provided in their charters remained in the Southwestern and the Augusta and Savannah railroads, notwithstanding the leases of the two roads to the Central Railroad & Banking Company.

It appears from the record here that on March 4th 1892, all of

the property and assets of the Central Railroad & Banking Company of Georgia, including its system of railroads and its leasehold interest in the Augusta & Savannah Railroad and in the Southwestern Railroad passed into the hands of Receivers of the Circuit Court of the United States for the Southern District of Georgia.

It further appears that on June 30th 1893, the said Receivers being then in possession of the leaseholds of the Augusta & Savannah Railroad and said Southwestern Railroad and operating the
73 same under the said leases, the Receiver was directed by the said Circuit Court of the United States for the Southern District of Georgia to ascertain whether they desired to permit their properties to remain in the hands of the Receivers, as representing the lessee company, with the right on the part of said corporation, or either of them, to claim the net results of the operation of their respective properties up to the rental contract, but not beyond; or whether the said respective corporations should receive from the Receiver the surrender of the leasehold interests held by him as Receiver of the Central Railroad & Banking Company of Georgia, and the Court further ordered that if any of the said Companies should make known their option to receive the surrender of the leasehold interest, the said Receiver should apply to the Court for an order authorizing and directing the surrender of the same; or should any of the said companies elect to permit the said leasehold interests to remain in the hands of the Receiver, said Companies should have the right to claim from said Court the net results of the operations of their properties by the Receiver up to the rental contract price and no more, unless the Receiver should, under the order of the Court, elect to retain said leasehold interests and to pay therefor the rental contract price.

The Augusta & Savannah Railroad and the Southwestern Railroad Company both elected to permit their respective properties to remain in the hands of said Receiver under this order, and the Receiver operated said railroads from said date to November 1st, 1895, and paid to the Augusta & Savannah and the Southwestern Railroad Company respectively the net earnings of their lines of railroad, which in neither case was as much as the rental stipulated for under the respective leases.

It then further appears that all of the properties and assets of the Central Railroad & Banking Company of Georgia were sold under foreclosure decrees, and at judicial sales, and were, for the most part,
purchased by Samuel Thomas and T. F. Ryan, who had put
74 forth a plan of re-organization for the acquirement of the properties and assets of the Central Railroad & Banking Company of Georgia, and organized a new company to be known as the Central of Georgia Railway Company, to take over the railroads and properties purchased by them under said re-organization plan.

And then it appears that among the assets and properties so sold and purchased were the leasehold interests of the Central Railroad & Banking Company of Georgia in the Augusta & Savannah Railroad and the Southwestern Railroad Company, and possession of the railroads and properties of these companies was delivered by the Re-

ceiver on the order of the purchasers to the Central of Georgia Railway Company, on November 1st 1895.

In the letter of the Comptroller General to the President of the Central of Georgia Railway Company he says this:

"I am advised that these roads (referring to the Augusta & Savannah and the Southwestern railroads) have been purchased by the Central of Georgia Railway Company at judicial sale under decree of foreclosure against your immediate predecessor in title and under leases in perpetuity."

It is urged therefore, as I understand the argument, that the title to these roads passed by this judicial sale was changed by reason of the receivership and proceedings thereunder and the official sale, so that the title to this property became vested in the Central of Georgia Railway Company. I am unable to see that that is the result of that proceeding. All that went into the hands of the receivers of the Central Railroad & Banking Company, according to the record here, were the leasehold interests in the Augusta & Savannah and in the Southwestern. Nothing could have been administered in the receivership case or sold in that case beyond the interest in these two roads that went into the receivers' hands, and that, as stated, was the old interest. These two lessor railroads, having the scheme of limited taxation provided for in their charters, and having, by authority of the Legislature, made the leases in 1862 and 1869 respectively, the fact that their lessee was placed in the hands of receivers and its property administered, could not in any way affect the
75 rights of the lessors with reference to taxation. They have their scheme of taxation by authority of the Legislature, they made the leases by authority of the Legislature, and the misfortune of the lessee company and the action of the court with reference to it, could not, it seems to me, affect the rights granted these lessor companies by the Legislature of the State.

On October 17th 1895, the Central of Georgia Railway Company was incorporated under the general railroad incorporation acts of 1892, and the acts amendatory thereof, with all the rights, powers, privileges and immunities enjoyed by the Central Railroad & Banking Company of Georgia under its original charter and amendments thereto, and with all the rights, powers, privileges and franchises provided in the laws of Georgia and particularly by the act of December 17th 1892 and acts amendatory thereof, and the said petitioners, under said charter and the provisions of the said act under which they were incorporated, were substituted for the original stockholders of the said Central Railroad & Banking Company of Georgia. The said petition for incorporation specified particularly that the said Central Railroad & Banking Company of Georgia was endowed with corporate capacity and power under the above mentioned act of January 22nd 1852, to lease and work the Southwestern Railroad, the Augusta & Savan-ah Railroad and all other lines of railroad connecting with its own.

On October 24, 1895, the Augusta & Savannah Railroad entered into a contract with the Central of Georgia Railway Company, whereby the lease of its railroad to the Central Railroad & Banking

Company was modified and renewed to the Central of Georgia Railway Company, the said renewed and modified contract running from the 1st day of November 1895 for the full term of 101 years, and renewable in like periods upon the same terms forever, the right of renewal to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

This lease provides that the lessee shall pay "all federal, state, county or municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon
76 the lessor or *or* its property under its charter and the Constitution and laws of the State of Georgia." The lease provides for the annual rental of $51,145 to be paid semi-annually.

It is then provided that "the said lessee hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of the same, the said lessor's railroads and other property and appurtenances, and in case it shall fail to pay any semi-annual amount of the rent as hereinbefore fixed, on the first day of January or July in any year for the space of six months after the same shall become due and payable as hereinbefore provided, and be demanded by the lessor, it shall then be lawful for the Board of Directors of the said lessor to terminate this lease and enter upon and resume possession of said railroad with the appurtenances and all other of its property hereby demised, and from thenceforth this indenture and the estate, rights and privileges hereby granted and every clause and article herein contained shall cease, determine and be void. And the said lessee will thereupon deliver immediate and peaceable possession to the said lessor of said railroad and other property and appurtenances hereby demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value."

On October 17th 1895, the Southwestern Railroad Company entered into a contract with the Central of Georgia Railway Company whereby the lease of its railroad to the Central Railroad & Banking Company of Georgia was modified and renewed to the Central of Georgia Railway Company, the said renewed and modified lease running from the 1st day of November, 1895, for the full term of 101 years, and renewable in like periods upon the same terms forever, the right of renewals to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

This lease also provided that the lessee should pay all taxes, as in the lease of the Augusta & Savannah Railroad. It also pro-
77 vided for an annual rental of $259,555, which was to be paid semi-annually. The lease contained the same language, substantially, as in the lease of the Augusta & Savannah Railroad above referred to as to the effect of the non-payment of rent, and the termination of the lease and the right of the lessor to enter for that reason.

These new leases cannot in any way affect the right of the Augusta & Savannah Railroad and the Southwestern Railroad Company to the scheme of taxation provided in their charters. The

rights of the Central Railroad & Banking Company either passed, by these judicial sales, into the purchasers, who organized the Central of Georgia Railway Company and thus into the latter company, or the effect of the sale was to terminate the leases and put these properties and the right to the possession and control of them in the two lessor companies. In either event there was no reason why the two lessor companies should not either renew their leases with the Central Railroad & Banking Company to the new company or make new leases to the new company; the point about the whole thing being that this right to the scheme of taxation provided for in the original charters remained all the time in the Augusta & Savannah Railroad and the Southwestern Railroad Company. The fact that the lessee company in the original leases and in these new leases, was to pay such taxes as the lessor companies might owe the State could not in any way affect the rights of the lessor companies. That was simply an arrangement between the lessors and the lessee for reasons which control-ed them in making the contract.

The taxes now assessed against the two railroads, the Augusta & Savannah and the Southwestern are assessed against the Central of Georgia Railway Company as the property of that Company. These assessments speak of the properties, in making the assessment as "that part of its property known in its system of railroads as the Augusta & Savannah Railroad" and "that portion of its property known in its system of railroads as the Southwestern Railroad." The assessments are against the Central of Georgia Railway Company as the owner of the property, and there is no attempt to assess it
78 for a leasehold estate or anything else in connection with these two properties, it appears except upon the theory and idea that the Central of Georgia Railway Company has acquired the title, by reason of the various things above set forth, to these two properties. This cannot be true under any view of the matter. Under the authority of the Georgia Railroad & Banking Co. case, the relation of landlord and tenant only would exist, that is the right on the part of the Central of Georgia Railway Company to possess, control and operate the property of the Augusta & Savannah Railroad and of the Southwestern Railroad Company.

But even if it be conceded that the Central of Georgia Railway Company has a leasehold interest in this property, as distinguished from a mere tenancy, it would not be the owner of the property, having the title thereto as against the Augusta & Savannah Railroad and the Southwestern Railroad Company. There has been no legislative action on this subject; it is simply the conclusion of the Comptroller General that the ownership of the two roads has passed to the Central of Georgia Railway Company.

The Comptroller General has been accepting taxes from these roads since 1895, as before, in accordance with their charter scheme of taxation. This action of the Comptroller General in accepting taxes on income, in accordance with the charters of the roads, while no estoppel against him, may be considered by the court as at least "persuasive authority" as to the proper method of taxation. L. & N. R. Co. v. Wright, 199 Fed. 454-459.

I do not understand that the effect of these leases as they now stand, being for 101 years subject to renewal, distinguishes them materially from that in the Georgia Railroad & Banking Company case. There is no attempt here to tax any leasehold interest in these two properties, or any other right therein, against the Central of Georgia Railway Company otherwise than as the owner thereof.

If an ad valorem tax can be collected against the Central of Georgia Railroad Company as the owner of the two other roads, it would place an additional burden upon the Augusta & Savannah and the Southwestern inconsistent with their charters, which have
79 been held by repeated decisions controlling in the matter, to be irrepealable contracts between these railroads and the state and violative of their rights under their charters.

It is clear that whatever rights the state has, if any, against the Central of Georgia Railway Company in connection with these two railroads, to pay taxes otherwise than as provided in the charters of the two companies, must be enforced in some other way than that proposed here. It cannot be done by assessing the entire value of these railroads for taxes against the Central of Georgia Railway Company as its property.

In view of the foregoing, it is evident that the proposed action of the Comptroller General would result in the impairment of the obligations of the contracts between the state and the Augusta & Savannah Railroad and the Southwestern Railroad Company. This being true, the plaintiff is entitled to the relief asked.

The question is not presented here, as in the Georgia Railroad case, of certain property being outside of the scheme of taxation provided in the original charters. There is a statement of the manner in which the aggregate value of these two roads was arrived at, but there is nothing to show any property added by the Central Railroad & Banking Company or the Central of Georgia Railway Company which might be taxable, and no facts on which to act in this respect. No opinion is expressed as to whether or not there is something in the way of a leasehold interest or otherwise, in these roads, subject to taxation against the Central of Georgia Railway Company as not being within the scheme of taxation contained in the charters. In the case as here made, however, the complainant is entitled to a decree.

This 18th day of March, 1913.

WM. T. NEWMAN,
U. S. Judge.

Filed in Clerk's Affice 18th day of March, 1913.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

80 *Final Decree.*

In the District Court of the United States for the Northern District of Georgia.

No. —. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of the State of Georgia.

This cause came on for final hearing and was argued on bill, demurrer, answer and agreed statement of facts: Whereupon, after full consideration, and for the reasons stated in the opinion of the presiding judge filed with the record, it is ordered, considered, adjudged and decreed as follows:

1. That the demurrer be and it is hereby over-ruled.

2. That the equity of this cause is with the plaintiff.

3. That the two executions for the State taxes for the year 1911 issued by the defendant against the plaintiff, being respectively one for $4,709.44 for "taxes on that portion of its property known in its system of railroads as the Augusta & Savannah Railroad", and one for $16,205.33 for "taxes on that portion of its property known in its system of railroads as the Southwestern Railroad", copies of which executions are attached to the bill as Exhibits "B" and "C", and all other executions heretofore issued by the defendant against the plaintiff for the year 1911 for taxes on the same property alleged to be due sundry counties, municipalities and school districts of the State aggregating $40,101.16, or other large sum, are null and void and of no effect, and shall be surrendered and cancelled; and the defendant, William A. Wright, Comptroller General of Georgia, and his successors in office, and all other persons who are or may hereafter be charged with the duty of collecting taxes within the State of Georgia or any poltical subdivision thereof, are hereby perpetually enjoined and restrained and commanded to desist and refrain from all efforts to collect the taxes represented by said executions, or to make any efforts towards the enforcement of said executions.

4. The defendant, William A. Wright, Comptroller General of the State of Georgia, and his successors in office and all per-
81 sons who are or may hereafter be charged with the duty of assessing and collecting taxes within the State of Georgia or any political subdivision thereof, are hereby perpetually enjoined and restrained and commanded to desist and restrain from all efforts to assess or to collect or to issue executions for State, county, municipal, or school district taxes against the plaintiff, Central of Georgia Railway Company, on that portion of its alleged property known in its system of railroads as the Augusta & Savannah Railroad, or on that portion of its property known in its system of railroads as the Southwestern Railroad (both alleged to be owned and operated by said Central of Georgia Railway Company), or any taxes against said defendant as the alleged owner of the aforesaid properties.

5. That the plaintiff do recover of the defendant its costs in this case, to be taxed by the clerk.

In open Court April 1st, 1913.

WM. T. NEWMAN,
U. S. Judge.

Filing.

Filed in Open Court April 1, 1913.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Dep. C'k.*

82 *Petition for Appeal.*

In the District Court of the United States for the Northern District of Georgia.

No. 29. In Equity.

CENTRAL OF GEORGIA RAILWAY CO.
vs.
WILLIAM A. WRIGHT, Comptroller-General of Georgia.

The above named defendant, William A. Wright, considering himself aggrieved by the decree made and entered on April 1, 1913 in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and he prays that an appeal may be allowed, and that a transcript of the record, proceedings, and papers on which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

THOMAS S. FELDER,
Attorney General of Georgia;
JNO. C. HART,
SAM'L H. SIBLEY,
Solicitors for William A. Wright, Comptroller General of Georgia.

Filed in Clerk's Office 9th day of Ap'l 1913.
O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

Order Allowing Appeal.

The foregoing petition for appeal is granted, and the claim of appeal therein made is allowed.

This April 9, 1913.

WM. T. NEWMAN,
Judge District Court United States for the Northern District of Georgia.

Filed in Clerk's Office 9th Day of Ap'l 1913.
O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

83 *Assignment of Errors.*

In the District Court of the United States for the Northern District of Georgia. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller-General of Georgia.

And now comes the respondent, and files the following assignment of errors particularly stating the errors on which he will rely in the prosecution of his appeal from the decree made in the above entitled cause by said court on April 1, 1913.

1. The court erred in adjudging that the equity of the cause is with the complainant, and in overruling respondent's demurrers to the petition.

2. The court erred in adjudging that the executions for state taxes for the year 1911 issued against the plaintiff for taxes on that portion of its property known in its system of railroads as the Augusta and Savannah and Southwestern Railroads, being exhibits B and C of the bill, and other executions issued for taxes for said year on said property in favor of counties, municipalities and school districts through which said railroads run, are null and void and of no effect; and in enjoining respondent from making any effort to collect the same; because each and every of said executions is valid and enforceable.

3. The court erred in adjudging that respondent and his successors in office be perpetually enjoined from collecting state, county, municipal or school district taxes from the plaintiff, Central of Georgia Railway Company on that portion of its property known as the Augusta and Savannah and Southwestern Railroads, or any taxes against said plaintiff as the owner of said properties.

4. The court erred in adjudging that under the instruments exhibited in the bill the Central of Georgia Railway Company was not the substantial owner of the Augusta and Savannah Railroad,
84 and of the Southwestern Railroad, and as such liable for state, county, municipal and school district taxes thereon, under the Constitution and laws of Georgia.

5. The court erred in holding that under said instruments the Central of Georgia Railway Company had a mere usufruct in said property, and no taxable interest or estate, under the laws of Georgia.

6. The Court erred in holding that the limitation of taxation of the corporation known as the Augusta and Savannah Railroad contained in its charter, passed to the Central of Georgia Railway Company, or protected the Central of Georgia Railway Company from ad valorem taxation in respect of the Augusta and Savannah Railroad; said charter limitation being personal to the Augusta and Savannah Railroad, and not running with its property in the hands of others; and never having been transferred to the Central of Georgia Rail-

way Company with the consent of the State of Georgia, at a time when the State could give such consent.

7. The court in holding that the obligation of said charter limitation of taxation of the Augusta and Savannah Railroad was impaired by the collection of ad valorem taxes from the Central of Georgia Railway Company, which has no such contract with the State of Georgia.

8. The court erred in holding that the limitation of taxation contained in the charter of the Southwestern Railroad Company passed to the Central of Georgia Railway Company, or protected the Central of Georgia Railway Company from ad valorem taxation in respect of the Southwestern Railroad; said charter limitation being personal to the corporation to which granted, and not running with its property; and never having been transferred to the Central of Georgia Railroad Company with the consent of the State of Georgia at a time when the State could give such consent.

9. The court erred in holding that the obligation of the limitation of taxation contained in the charter of the Southwestern Railroad Company, was impaired by the collection of ad valorem taxes from the Central of Georgia Railway Company, which has no such contract with the State of Georgia.

10. The court erred in holding that the Augusta and Savannah railroad was not subject to ad valorem taxation at least by the
85 municipalities through which it runs, the original charter of the Augusta and Savannah Railroad so providing expressly.

11. The court erred in holding that the Central of Georgia Railway Company, under its charter granted in pursuance of the general railroad act of 1892 for the incorporation of railroads, succeeded to the rights and immunities of either the Augusta and Savannah Railroad, or the Southwestern Railroad Company, or the Central Railroad and Banking Company in respect of their charter contracts for limited taxation; because the Constitution of the State of Georgia then in terms forbade such special contracts or immunities in respect of taxation, and said Act of 1892 in terms provided, that "nothing in this article shall be construed to reserve any exemption from taxation, either municipal, state or county, or any special rights, privileges and immunities, that are not herein authorized to be granted to each and all railroads alike, in conformity to the present Constitution of Georgia."

12. The court erred in holding that the acceptance heretofore of taxes measured by the charter contracts of the Augusta and Savannah Railroads, and Southwestern Railroad Company, was of any force or authority against a demand for proper ad valorem taxes according to the Constitution and laws of Georgia; said Constitution expressly declaring the acts of all officers and departments of government to be null and void for any such purpose.

13. In adjudging that the holder of a perpetual lease at a fixed rental, was not the substantial owner of property and liable for the taxes thereon, the court went contrary to the settled law of the State of Georgia, which is controlling, as established by the cases of Wells vs. Savannah, 87 Ga. 397, and Wells vs. Savannah, 107 Ga. 1, de-

cided by the Supreme Court of Georgia, and affirmed by this court, Wells vs. Savannah 181 U. S. 531.

In order that the foregoing assignments of error may be made a part of the record, respondent presents the same to the court, and prays a reversal of the decree, and that such disposition be made of the cause as equity and the laws of the United States require.

THOMAS S. FELDER,
Attorney General of Georgia;
JOHN C. HART,
86 SAM'L H. SIBLEY,
Solicitors for William A. Wright, Comptroller-General.

Filed in Clerk's Office 9th day of Ap'l 1913.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

87 *Appeal Bond.*

In the District Court of the United States for the Northern District of Georgia. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of State of Georgia.

Know all men that we, William A. Wright, Comptroller General of Georgia, as principal, and Philip Cook as security, are held and firmly bound unto Central of Georgia Railway Company, its successors or assigns, in the sum of Five Hundred dollars to be paid to the said Central of Georgia Railway Co. its successors and assigns, to which payment well and truly to be made the said principal and security bind themselves their heirs, executors and administrators firmly by these presents.

Sealed with our seals this April 9, 1913.

Whereas the above named respondent, William A. Wright, Comptroller General, has appealed to the Supreme Court of the United States from a decree in favor of the above named complainant, Central of Georgia Railway Company rendered in said entitled cause on April 1, 1913 in the District Court of the United States for the Northern District of Georgia, to reverse said decree:

Now the condition of this bond is such that if the said appellant shall prosecute *their* appeal to effect and answer all costs and damages that may be awarded against him if he should fail to make good his appeal, then this obligation to be void; else of full force and effect.

WM. A. WRIGHT,
Comp. Gen'l of Ga.
PHILIP COOK.

The foregoing bond approved as to form, amount and sufficiency of security, this April 9, 1913.

WM. T. NEWMAN,
Judge District Court of United States
for Northern District of Georgia.

Filed in Clerk's Office 9th day of Ap'l 1913.

O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy.*

88 *Original Citation and Acknowledgment of Service (on Back).*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Central of Georgia Railway Company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Georgia wherein William A. Wright, Comptroller General of Georgia is Appellant, and you are defendant in appeal to show cause, if any there be why the Decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States this Ninth day of April, in the year of our Lord one thousand nine hundred and Thirteen.

WM. T. NEWMAN,
U. S. Judge.

Filed in Clerk's Office 9th Day of Ap'l 1913.

O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy.*

89 Due and legal service of the within citation for appeal acknowledged and accepted. This 10th day of April 1913.

LAWTON & CUNNINGHAM,
LITTLE & POWELL,
Solicitors for Central of Georgia Railway Company.

Filed in Clerk's Office 10th Day of Ap'l 1913.

O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy.*

90 *Stipulation of Counsel as to Transcript of Record.*

In the District Court of the United States for the Northern District of Georgia. In Equity.

CENTRAL OF GEORGIA RAILWAY CO.
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia.

Comes William A. Wright, Comptroller General of Georgia, respondent in the above stated case, and in connection with his appeal therein files this his precipe and specifies as the portions of the record in said cause proper to be transmitted to the Supreme Court with his said appeal the following:

1. The original petition and exhibits thereto and entries thereon. 2. The demurrer of respondent thereto. 3. The answer of respondent thereto. 4. The Stipulation of facts to be considered with the pleadings. 5. The opinion of the Court. 6. The decree of the court. 7. The petition for appeal, allowance thereof, bond therefor, citation for appeal and service of same and other proceedings in connection with respondent's appeal.

THOS. S. FELDER,
Attorney General;
JOHN C. HART,
SAM'L H. SIBLEY,
Solicitors for William A. Wright,
Comptroller General.

Due and legal service of the foregoing accepted and acknowledged, and further service waived. This Ap'l 9, 1913.

LAWTON & CUNNINGHAM,
LITTLE & POWELL,
Solicitors for Central of Georgia Railway Co.

Filed in Clerk's Office 9th day of Ap'l 1913.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

91 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Northern District of Georgia, Northern Division:

I, Olin C. Fuller, Clerk of the District Court of the United States for the Northern District of Georgia, do hereby certify that the foregoing and attached 90 pages of printing and writing contain a true, full, correct and complete copy of the original record, assignments of error and all proceedings had (as stipulated by counsel) in the case of William A. Wright, Comptroller General of Georgia, Appellant,

vs. Central of Georgia Railway Company, Appellee, as fully as the same remain of record and on file in my office at Atlanta, Georgia, except that the original Citation and Acknowledgment of Service thereon is included in the stead of a copy.

In Testimony Whereof, I hereunto set my hand and the seal of the said District Court at the City of Atlanta, Georgia, this 24th day of April, A. D. 1913.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

Endorsed on cover: File No. 23,666. N. Georgia D. C. U. S. Term No. 161. William A. Wright, Comptroller General of Georgia, appellant. vs. The Central of Georgia Railway Company. Filed May 2d, 1913. File No. 23,666.

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No. 162.

Supreme Court of the United States

October Term, 1914.

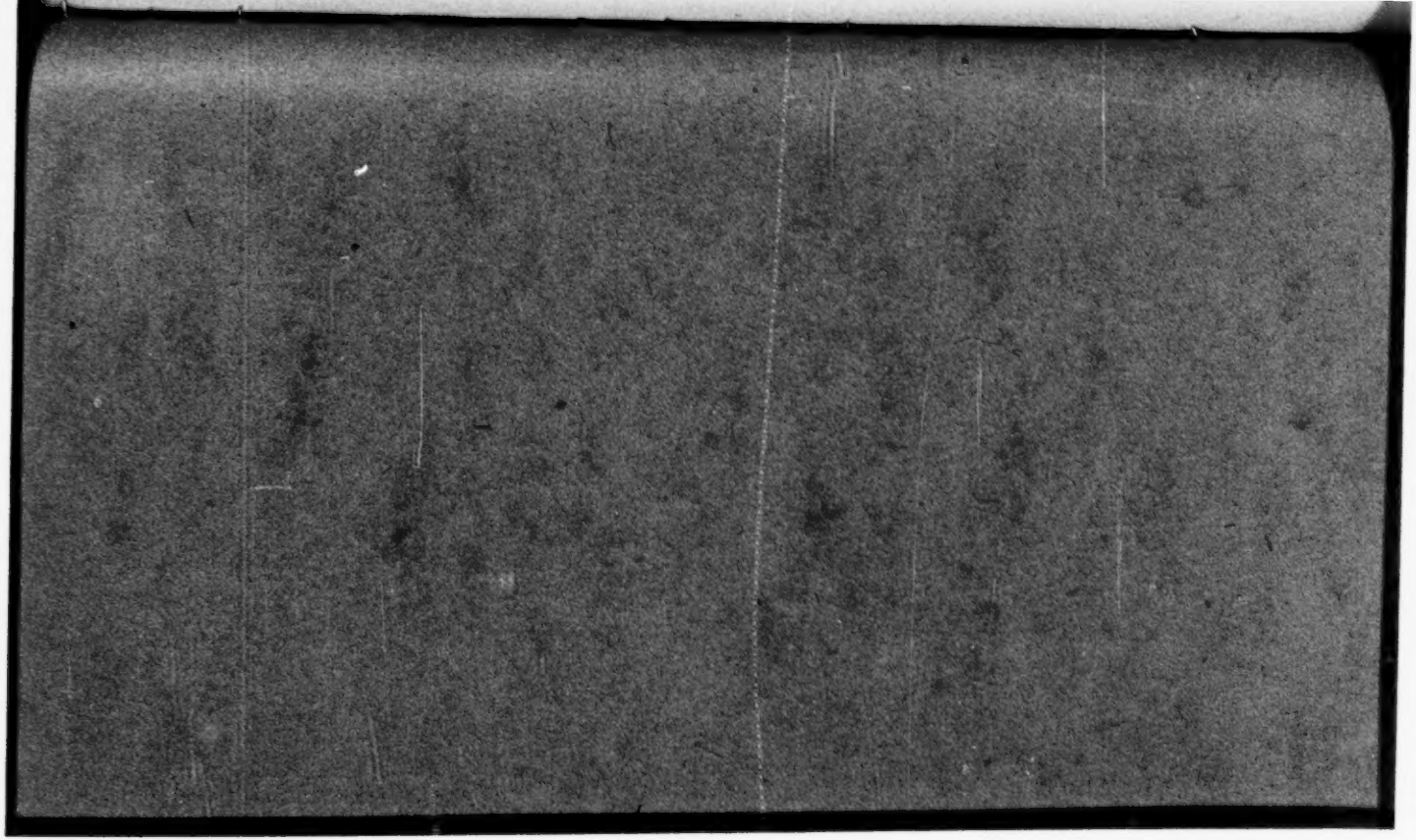
WILLIAM A. WRIGHT
Comptroller-General of the State of Georgia,
Appellant,

vs.

CENTRAL OF GEORGIA RAILWAY COMPANY,

Brief of Law and Argument for Appellant.

JOHN C. HART,
SAMUEL B. SIBLEY,
Counsel for
WILLIAM A. WRIGHT, Comptroller-General,
Appellant.



No. 161.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

WILLIAM A. WRIGHT,
Comptroller-General of the State of Georgia, Appellant,

vs.

CENTRAL OF GEORGIA RAILWAY COMPANY.

STATEMENT OF THE CASE.

This case involves the liability of Central of Georgia Railway Company, Appellee, for ad valorem taxes on the Augusta and Savannah Railroad and portions of the Southwestern Railroad, under the following statement of facts:

The Augusta and Savannah Railroad was incorporated under the laws of Georgia December 31, 1838. Under the 13th section of its charter it was enacted

> "That the said railroad and the property of said company shall not be subject to be taxed higher than one-half of one per cent. on its annual income, and no city or town corporation shall have power to tax the stock of said company, but may tax any property, real or personal, of said company within the jurisdiction of said city or town, in the same ratio of taxation of like property."

The Southwestern Railroad Company was incorporated under the laws of Georgia December 22, 1845, and it was provided in the 14th section of said Act

"That said Railway and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its net annual income."

THESE ROADS WERE LEASED.

The Augusta and Savannah Railroad was leased in perpetuity on the 1st day of May, 1862, under appropriate authority, to the Central Railroad & Banking Company of Georgia, a railroad corporation chartered under the laws of Georgia December 14, 1835, the remote predecessor of Appellee. The language of the lease is:

"To have and to hold the said road and appurtenances unto the said Central Railroad & Banking Company of Georgia for, during and until the full term and end of the charter of the Augusta and Waynesboro Railroad, and of the Augusta and Savannah Railroad; that is to say in perpetuity, free and clear of other claim or demand for right of way, for damage or other claim which may at this date exist against the said The Augusta and Savannah Railroad. It being understood that a forfeiture of the charter for any act or thing done or suffered by the said, The Central Railroad & Banking Company of Georgia, shall not terminate the lease or affect the relation of the contracting parties toward each other."

At a rental of $73,000 per annum, payable as follows: .... See copy of the lease, Exhibit "D", page 23 of Record.

The Southwestern Railroad Company was on the 24th day of June, 1869,

"Demised, leased, and to farm let, to the Central Railroad & Banking Company of Georgia, for and during the entire continuance of the corporate

existence of the said Southwestern Railroad Company."

The demise is in perpetuity and conferred upon the Central Railroad & Banking Company of Georgia.

> "Exclusive possession and control of the Southwestern Railroad and its appurtenances, and all other property of the said party of the first part, and permit it to exercise through its proper officers henceforth all rights, privileges and control over the same which the said party of the first part has or might exercise over, and with regard to the same as if this demise were not made, except as to the organization of the party of the first part, and also to receive, control and dispose of all of the earnings of the Southwestern Railroad Company, and to merge the same with the earnings of the said The Central Railroad & Banking Company of Georgia, and to decide what dividends shall be declared."

The consideration was, that the Central Railroad & Banking Company of Georgia would pay in perpetuity to the stockholders of the said Southwestern Railroad Company,

> "Dividends which shall bear to the dividends declared and paid to its stockholders the ratio of 8 to 10. . . . . That is to say, $8.00 to each share of Southwestern Railroad stock for every $10.00 declared and paid to each share of its own stock, and that no semi-annual dividend paid to the stockholders of the Southwestern Railroad Company should be less than at the rate of 7 per cent. per annum on the par value of their stock . . . . and be free from all taxes to the stockholders." See Exhibit "E", page 26 of Record.

THE CENTRAL RAILROAD & BANKING COMPANY IS SOLD.

On the 4th day of March, 1892, all of the property and assets of the Central Railroad & Banking Company

of Georgia, including the Augusta and Savannah, and the Southwestern Railroad, passed into the hands of Receivers appointed by the Circuit Court of the United States for the Southern District of Georgia. The Receivers operated the roads until October 7, 1895, when all of the property and assets of the Central Railroad & Banking Company of Georgia, including the leases in perpetuity of the Augusta and Savannah Railroad and the Southwestern Railroad, were sold at public outcry, in the city of Savannah, to Saml. Thomas and Thos. F. Ryan.

Central of Georgia Railway Company Takes Over the Old Properties.

Upon the petition of Thomas and Ryan, purchasers at judicial sale, and their associates, the Central of Georgia Railway Company (Appellee) was incorporated October 17, 1895, under the provisions of an Act of the General Assembly of the State of Georgia, the same being a general act for the incorporation of roads, approved December 17, 1892, Code of Georgia (1911), Sections 2577-2599 inclusive.

In pursuance of this Act the Central of Georgia Railway (Appellee) organized and took over the Augusta and Savannah and Southwestern Railroads, and from thence said roads have been operated as part of the Central of Georgia Railway. The Act especially authorizing, "that in case of sale of any road heretofore incorporated that the party or parties acquiring title under the sale shall exercise and enjoy the same rights, privileges, grants, franchises and immunities enjoyed by the company sold." This Act also further provided,

> "That nothing in this Act shall be construed to reserve any exemption from taxation, either State,

county or municipal, or any special rights, privileges and immunities that are not herein authorized to be granted to each and all railroads alike, in conformity with the present Constitution of Georgia."

THE CENTRAL OF GEORGIA RAILWAY COMPANY MODIFIES THE OLD LEASES IN PERPETUITY.

The Central of Georgia Railway Company, Appellee, after it had been incorporated and organized, and in possession of the Augusta and Savannah and Southwestern Railroads, on the 24th day of October, 1895, modified the lease of May 1st, 1862, with the Central Railroad & Banking Company above mentioned, in the following particulars: That the lease was to begin on the 1st day of November 1895, and was to run,

> "For the full term of 101 years, and renewable in like periods on the same terms, forever."

The stockholders of the Augusta and Savannah were thereafter to be paid 5 per centum upon their capital stock. The lessee obligated itself to pay,

> "All Federal, State, County or Municipal taxes and assessments ordinary and extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia, or of the United States." See Exhibit "E", page 33 of Record.

On October 17, 1895, Appellee renewed or modified the lease of date June 24, 1869, of the Southwestern Railroad Company to the Central Railroad & Banking Company, and provided therein for an annual payment of 5 per cent. to the stockholders of the Southwestern. This lease is:

"For the full term of 101 years, and renewable in like periods on the same terms, forever."

It provides also as to taxes, that the lessee would pay,

"All Federal, State, County or Municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia or of the United States."

These leases respectively contain defeasance clauses for non-payment of rent. See Exhibit "G", page 35 of Record.

THE COMPTROLLER-GENERAL DEMANDS AD VALOREM TAXES OF THE CENTRAL OF GEORGIA RY. CO. ON THE LEASED LINES.

On November 21, 1911, the Comptroller-General demanded ad valorem taxes of Appellee on the leased lines, as follows:

"Nov. 21, 1911.

MR. CHAS. H. MARKAM,
Prest. Central of Georgia Ry. Co.,
No. 135 Park Row, Chicago, Ill.

DEAR SIR: I am advised by Attorney-General Felder and by Judge Hart, Special Counsel, that you should return for ad valorem taxation the Augusta and Savannah Railroad and the Southwestern Railroad, and such of its branches as heretofore have not been returned for ad valorem taxation, now being operated by the Central of Georgia Railway Company. The State for several years has collected the taxes from these corporations on the basis of one-half of one per cent. of their net income, in accordance with the provisions in their charters. I am advised that these roads have been purchased by the Central of Georgia Railway Com-

pany at judicial sale under decree of foreclosure against your immediate predecessor in title, and under leases in perpetuity. The State contends that the tax provisions in the original charters were personal to the companies, and were not vendible or assignable, and therefore could not be invoked by the Central of Georgia Railway Co., as the measure of its liability for taxation, either as owner or lessee. You are therefore in default in not returning this property for taxation, and I demand that you make return of this property, or your interest therein, and the value of all property connected therewith, within 20 days, for the purpose of ad valorem taxation, or in default I shall proceed to assess the same as by statute provided, from the best information obtainable.

Yours very truly,

WM. A. WRIGHT,

Comptroller-General."

In response to this demand the property was returned under protest by the Vice-President of the Central of Georgia Railway Company, and on the valuation of the property as returned executions were issued against Appellee to enforce the same.

APPELLEE FILES PETITION FOR INJUNCTION.

Appellee filed a bill in the District Court of the United States for the Northern District of Georgia, asking that the executions be declared null and void; that the Comptroller-General of the State and his successors in office be perpetually enjoined from attempting to enforce the executions, and that a restraining order be passed pending the adjudication of the issue raised. The grounds upon which the injunction was asked are substantially: That the Central of Georgia Railway Company was not

liable for any taxes; that the leases created a mere usufruct and there was no taxable estate to lessee; that the State by charter granted had made a contract with the Railroad Companies in question, and that it was inviolable, and that an effort to collect ad valorem taxes by the State was in violation of Article 1, Section 10, Paragraph 1, of the Constitution of the United States, which provides that:

> "No State shall . . . . pass any law impairing the obligation of contract."
>
> "That to tax the property to complainant would be to deprive it of its property without due process of law, contrary to the 14th Amendment to the Constitution of the United States."

Complainants further insisted that for previous years the State, through its taxing officers had received the taxes on this property on the basis of their several charter provisions, and hence the State and its political sub-divisions were estopped from now claiming ad valorem taxes. The case was heard on petition, answers and demurrer, and an agreement of counsel on facts. See page 48 of Record.

THE EXECUTIONS WERE ENJOINED.

On the 18th day of March, 1913, the Presiding Judge enjoined the executions, upon the ground, That appellee had no taxable interest in the property, and upon the further ground:

> "If an ad valorem tax can be collected against the Central of Georgia Railway Co., as the owner of the other two roads, it would place an additional burden upon the Augusta and Savannah and the Southwestern Railroads inconsistent with their charters, which have been held by repeated decis-

ions controlling in the matter, irrepealable contracts between these roads and the State, and violative of their rights under their charters."

In pursuance of this opinion a final decree was taken that the executions issued for taxes were null and void; the Comptroller-General and his successors in office were perpetually enjoined from enforcing the same, and the Comptroller-General and his successors in office were perpetually restrained,

> "From all efforts to assess or collect, or to issue executions for State, county, municipal or school district taxes against the plaintiff, Central of Georgia Railway Co. on that portion of its alleged property known in its system of roads as the Augusta and Savannah Railroad, or on that portion of its property known in its system of roads as the Southwestern Railroad (both alleged to be owned and operated by the said Central of Georgia Railway Co.), or any taxes against said defendant as the alleged owner of the aforesaid property."

ASSIGNMENTS OF ERROR.

On the 9th day of April thereafter the Respondent, now Appellant, made various assignments of error, as follows:

> "1. The court erred in adjudging that the equity of the cause is with the complainant, and in overruling Respondent's demurrers to the petition.
>
> "2. The court erred in adjudging that the executions for State taxes for the year 1911, issued against the plaintiff for taxes on that portion of its property known in its system of railroads as the Augusta and Savannah and Southwestern Railroads, being Exhibits B and C of the bill, and other executions issued for taxes for said year on said property in favor of counties, municipalities

and school districts through which said railroads run are null and void, and of no effect; and in enjoining Respondent from making any effort to collect the same; because each and every of said executions is valid and enforceable.

"3. The court erred in adjudging that Respondent and his successors in office be perpetually enjoined from collecting State, county, municipal or school district taxes from the plaintiff, Central of Georgia Railway Co., on that portion of its property known as the Augusta and Savannah and Southwestern Railroads, or any taxes against said plaintiff as the owner of said properties.

"4. The court erred in adjudging that under the instruments exhibited in the bill the Central of Georgia Railway Co. was not the substantial owner of the Augusta and Savannah Railroad, and the Southwestern Railroad, and as such liable for State, county, municipal and school district taxes thereon, under the Constitution and laws of Georgia.

"5. The court erred in holding that under said instruments the Central of Georgia Railway Co. had a mere usufruct in said property, and no taxable interest or estate, under the laws of Georgia.

"6. The court erred in holding that the limitation of taxation of the corporation known as the Augusta and Savannah Railroad contained in its charter, passed to the Central of Georgia Railway Co., or protected the Central of Georgia Railway Company from ad valorem taxation in respect of the Augusta and Savannah Railroad; said charter limitation being personal to the Augusta and Savannah Railroad, and not running with its property in the hands of others; and never having been transferred to the Central of Georgia Railway Company with the consent of the State of Georgia, at a time when the State could give such consent.

"7. The court erred in holding that the obligations of said charter limitation of taxation of the Augusta and Savannah Railroad was impaired by the collection of ad valorem taxes from the Central of Georgia Railway Company, which has no such contract with the State of Georgia.

"8. The court erred in holding that the limitation of taxation contained in the charter of the Southwestern Railroad Company passed to the Central of Georgia Railway Company, or protected the Central of Georgia Railway Company from ad valorem taxation in respect of the Southwestern Railroad; said charter limitation being personal to the corporation to which granted, and not running with its property, and never having been transferred to the Central of Georgia Railway Company with the consent of the State of Georgia at a time when the State could give such consent.

"9. The court erred in holding that the obligation of the limitation of taxation contained in the charter of the Southwestern Railroad Company, was impaired by the collection of ad valorem taxes from the Central of Georgia Railway Co., which has no such contract with the State of Georgia.

"10. The court erred in holding that the Augusta and Savannah Railroad was not subject to ad valorem taxation as least by the municipalities through which it runs, the original charter of the Augusta and Savannah Railroad so providing expressly.

"11. The court erred in holding that the Central of Georgia Railway Company, under its charter granted in pursuance of the general Railroad Act of 1892, for the incorporation of railroads, succeeded to the rights and immunities of either the Augusta and Savannah Railroad or the Southwestern Railroad Company, or the Central Railroad & Banking Co. in respect of their charter contracts for limited taxation; because the Con-

stitution of the State of Georgia then in terms forbade such special contracts or immunities in respect of taxation, and said Act of 1892 in terms provided that,

" 'Nothing in this article shall be construed to reserve any exemption from taxation, either municipal, State or county, or any special rights, privileges and immunities, that are not herein authorized to be granted to each and all railroads alike, in conformity to the present Constitution of Georgia.'

"12. The court erred in holding that the acceptance heretofore of taxes measured by the charter contracts of the Augusta and Savannah Railroad and the Southwestern Railroad Company, was of any force or authority against a demand for proper ad valorem taxes according to the Constitution and laws of Georgia; said Constitution expressly declaring the Acts of all officers and departments of government to be null and void for any such purpose.

"13. In adjudging that the holder of a perpetual lease at a fixed rental was not the substantial owner of property, and liable for the taxes thereon, the court went contrary to the settled law of the State of Georgia, which is controlling, as established by the cases of Wells vs. Savannah, 87 Ga. 397, and Wells vs. Savannah, 107 Ga. 1, decided by the Supreme Court of Georgia and affirmed by this court. Wells vs. Savannah, 181 U. S. 531."

BRIEF OF LAW AND ARGUMENT.

It is manifest from the foregoing statement that there are but two questions of law involved, viz.: Whether the lessee in perpetuity has any taxable interest in the property, leased, and secondly, whether such lessee may claim the benefits of an inviolable charter contract made with its predecessor in title.

The contention of the State in the District Court was, and now is, that it is immaterial whether the Augusta and Savannah and the Southwestern Railroads have contracts within the protection of the Impairment Clause of the Federal Constitution. It is conceded they have such contracts, but those contracts are foreign to the question at bar, whether the Central of Georgia Ry. Co., Appellee, acquiring and operating these roads is liable for ad valorem taxes on these properties under the facts of the case. It is the contention of the State of Georgia that those contracts are personal; are not vendible nor transferable, and are valid only so long as those companies as such conducted the business of common carriers. The State charter contracts limiting the tax rate is personal to these corporations to whom granted and did not run with the property, not having been transferred to the Central of Georgia Railway Co. with the consent of the State of Georgia at a time when the State could give such consent, and cannot be invoked by Appellee, lessee, for its own benefit. This proposition has been ruled a number of times by this court:

> "Although the obligations of such a contract are protected by the Federal Constitution from impairment by the State the contract itself is not property which, as such, can be transferred by the owner, because, being personal to him with whom it was made it is incapable of assignment."

The person with whom the contract is made by the State may continue to enjoy benfits unmolested as long as he chooses, but there his rights end, and he cannot by any form of conveyance transmit the contract or its benefits to a successor. Rochester Ry. Co. vs. Rochester, 205 U. S. 247, citing,

Morgan v. Louisana, 93 U. S., p. 217;

Wilson vs. Gaines, 103 U. S., p. 417;
Louisville & Nashville Railroad Co. vs. Palmes, 109 U. S., p. 244;
Pickard vs. Tennessee, etc. 130 U. S. p. 637;
St. Louis, etc. Co. vs. Gill, 150 U. S., p. 649;
Norfolk & Western Railroad Co. vs. Pendleton, 156 U. S.

CONSTITUTION OF THIS STATE FORBIDS EXEMPTION.

Under the Constitution of this State, Article 7, Section 2, Paragraph 1, towit.:

> "All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax. . . . "

At the time that Appellee was incorporated the Constitution of this State prohibited the exemption of property of corporations from taxation, and hence Appellee cannot claim any benefits from these charter exemptions.

Constitution of Georgia, Article 7, Section 2, Paragraph 5:

> "The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

> "The authorities are numerous and conclusive that no corporation can receive by transfer from another an exemption from taxation or governmental regulation, which are inconsistent with its own charter, or with the Constitution or laws of the State then applicable; and this is true even though, under legislative authority the exemption is transferred by words which clearly include it."

Rochester Py. Co. vs. Rochester, 205 U. S., p. 247;

Trask v. McGuire, 18 Wallace, 391;

Shields v. Ohio, 95 U. S. 319;
Maine Central R. R. v Maine, 96 U. S. 49;
Railroad Co. v. Georgia, 98 U. S. 359.
Yazoo, &c. R. R. v. Adams, 180 U. S. 1;
Grand Rapids &c. R. R. v. Osborn, 193 U. S. 17;
San Antonio Traction Co. v. Altgelt, 200 U. S. 304.

The very law under which Appellee was organized and acquired the roads in question, provided,

> "That nothing in this Act shall be construed to reserve any exemption from taxation. . . . not herein authorized to be granted to each and all roads alike, in conformity with the present Constitution of Georgia." Code of Georgia 1911, Vol. 1, Sec. 2585, sub-section 11.

WHETHER THE EXEMPTION CLAIMED IS TOTAL OR A COMMUTED TAX RATE IT STANDS UPON THE SAME PRINCIPLE.

The fact that the charter contracts provide a scheme of taxation on the per cent. basis doesn't alter the principle. This feature is made clear in the case of Great Northern Ry. Co. v. Minnesota, 216 U. S., page 207.

> "Where the Constitution of the State requires equal and uniform taxation of all real and personal property in the State. . . . the Legislature cannot thereafter agree that the payment of a given per cent. of the earnings of a corporation . . . . shall be in lieu of all other taxation, and such contract, if attempted to be made, would not be protected by the impairment of obligation clause of the Constitution of the United States. There is a difference between a contract for a commuted system of taxation on the earnings of a corporation and a specific exemption from taxation of lands granted to the corporation, for a defined period, the former is

personal and not assignable, while the latter is attached to and follows the land."

It was not competent for the Legislature, in 1892, after the Constitution of the State went into effect, taxing all property and prohibiting the exemption of any, to extend an exemption previously granted. So whether the Augusta and Savannah Railroad and the Southwestern Railroad have irrepealable contracts limiting the tax rate the fact is immaterial to the question at bar, viz.: the liability of Appellee for taxation as lessee, in perpetuity of these properties. This disposes of the only Federal question raised and pressed in the trial of this case in the court below.

LESSEE IN PERPETUITY IS THE OWNER OF PROPERTY FOR THE PURPOSE OF TAXATION.

The only remaining question is, whether the lessee, Appellee, has any taxable interest in these roads. This question is a State rather than a Federal question. It is not an open one in Georgia. Civil Code of Georgia, 1911, Section 1018 declares:

> "Taxes are to be charged against the owner of property if known, and against the specific property itself if the owner is not known. Life tenants and those who own and enjoy the property are chargeable with the tax thereon. Hence while the public may treat property as belonging either to the maker or the holder of a bond for titles, when the latter is in possession, yet as between the parties the one receiving the rents or enjoying the use is liable for the tax."

The Supreme Court of Georgia, on April 15, 1913, in Panick Sr. exr. et al., Appellant, vs. Atkinson et al., 139 Ga. 649, which was a suit by the lessee against the lessor

for the recovery back of a portion of the tax attributable to the land which had been paid by the lessee. The Supreme Court of Georgia ruled that the entire taxes were chargeable to the lessee in perpetuity, holding.

> "We think that a perpetual lease is a substantial equivalent of a fee reserving rent. A grant of land to another reserving a fixed annual rental, with power to re-enter for non-payment of rent, creates a defeasible fee." Citing Van Rensselaer v. Hayes, 19 N. Y. page 68; Stephenson v. Haines, 16 Ohio St. p. 478; Hudson Tunnel Co. v. Attorney-General, 27 N. J. Equity, page 573.

To the same effect the Supreme Court of Georgia held in a prior case:

> "The value of property consists in its use, and he who owns the use forever, though it be on condition subsequent, is the true owner of the property for the time being."
>
> Wells v. Mayor & Aldermen, 87 Ga. 397.

This language is quoted approvingly by the Supreme Court of the United States in the case of J. W. Perry Co. v. Norfolk, 220 U. S. 479.

The learned editor of Lawyers Reports Annotated, in his note to the case of Penick v. Atkinson, supra., in 46 L. R. A. (New Series) regards leases for 99 years, and those renewable forever, as being in principle the same as perpetual leases. Such leases were involved in

> Cincinnati College v. Yeatman, 30 Ohio St. 276;
> Street v. Columbus, 75 Miss. 822;
> Washington Market Co. v. District of Columbia, 4 Mackay, 416, and Norfolk v. J. W. Perry, 108 Va. 28, 220 U. S. 472.

In all of which the lessee was held the *owner* for purposes of taxation.

Lessee, Now Appellee, Contracted to Pay the Taxes in Question.

It will be noticed that Appellee under the decisions of Georgia would be liable for taxes on the property in the absence of any contract with lessor. But its liability in the case at bar is doubly certain by reason of its express contract in the leases, that it would pay:

> "All Federal, State, County or Municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia, or of the United States."

The action therefore of the Comptroller-General in issuing executions to collect the taxes is an effort at *enforcement* instead of *impairment* of its contract.

Conclusion.

It is respectfully insisted in the light of the foregoing authorities that the learned Judge in the court below was in error in the two conclusions he reached as the basis for his judgment, first, that a lessee in perpetuity of property in Georgia has no taxable interest therein, and secondly, that to tax such lessee with property acquired from a lessor who did have an irrepealable contract with the State would violate the impairment clause of the Federal Constitution.

Neglect to Pay Taxes in the Past no Reason for Future Exemption.

The fact that lessee, now Appellee, in the past has neglected to return this property for taxation cannot be urged as reason for future exemption. This failure to collect the taxes from Appellee does not make a contract

of exemption, or afford excuse for relief from taxation for all future years to come. Appellee has simply avoided meeting its past obligations.

> "The mandate of the Constitutioon of Georgia of 1877 is to tax all property save that expressly exempted by the Legislature under Constitutional authority, if any is taxed. That this mandate may heretofore have been disregarded is no reason why it should not be obeyed now."
>
> Wells vs. Savannah, 181 U. S. 547.

Neither the action nor the inaction of the Tax Department could raise an exemption: Article 4, Section 1, Paragraph 1:

> "The right of taxation is a sovereign right, inalienable, indestructible, is the life of the State, and rightfully belongs to the people in all republican governments, and neither the General Assembly, nor any nor all other departments of government established by this Constitution shall ever have the authority to irrevocably give, grant, limit or restrain this right; and all laws, grants, contracts, *and all other acts whatsoever*, by said government *or any department thereof*, to effect any of these purposes, shall be and are hereby declared to be null and void for every purpose whatever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant, or contract whatsoever by the General Assembly."

JOHN C. HART,
SAMUEL H. SIBLEY,
Of Counsel for Appellant.

JAN 23 1915
JAMES D. MAHER
CLERK

No. 161.

Supreme Court of the United States

October Term, 1914.

WILLIAM A. WRIGHT
Comptroller-General of the State of Georgia,
Appellant

vs.

CENTRAL OF GEORGIA RAILWAY COMPANY.

Reply Brief for Appellant.

JOHN C. HART,
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of Counsel for
WILLIAM A. WRIGHT, Comptroller-General,
Appellant.

Chas. P. Byrd, State Printer, Atlanta.

SUPREME COURT OF THE UNITED STATES,
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Reply Brief for Appellant.

JOHN C. HART and SAMUEL H. SIBLEY of Counsel for WILLIAM A. WRIGHT, Comptroller-General, Appellant.

ADDENDUM IN REPLY TO BRIEF OF APPELLEES

I.

By the constitution and laws of Georgia, a uniform ad valorem tax is laid on all property. Where by valid contract the State has disabled herself from enforcing this just and right rule of taxation, the disability must be respected; but the disability will be jealously limited to the person for whose benefit it was created, and to the property or interests in property to which it indubitably applies. The adaptation of the law to the contract may require a division of interests in property for taxation not ordinarily made. Such division will not constitute an unequal protection of the laws, being the result of the inviolable contract.

II.

The liability to taxation, and the incidence thereof, are controlled by the State laws. In the absence of a construction of them by the State courts upon a point, the decision of which will either subject property to the constitutional taxation, or except it therefrom, this court will resolve every doubt in favor of the constitutional taxation:

New Orleans vs. Stempel, 175 U. S. 309.
Assessors vs. Comptoir National, 191 U. S. 402.

III.

The decisions of the Supreme Court of Georgia as to the liability of the Southwestern Railway Co., and Augusta and Savannah Railroad Co., to ad valorem taxation have no bearing on the question of the liability to such taxation of the Central of Georgia Railway Co. The former have a contract protecting them. The latter has none. These cases could not have decided that the Central Company owed no taxes, as here contended, because such a question was never raised, nor was that company a party to the cases.

The cases decided 54 Ga. 401, as revised by this court in 92 U. S. 676, decided only that the charters of the Southwestern and Augusta and Savannah Railroad Companies were a protection against the collection of ad valorem taxes from *those companies*.

In the case reported 62 Ga. 468, the fact that the road was leased was before the court, and the contention made that the income tax should be estimated on the lease money, rather than the gross income from the operation of the road. The question whether the lease operated to make the lessee owe ad valorem taxes or not was never

suggested to the court. There was no pretense of *decision* on any question except that the court was *without jurisdiction.* The court said:

> "The other points are ruled to indicate the opinion of this court on other questions necessary to a settlement of the case should the parties desire a *settlement.* The remedy by bill and injunction is not before us."

So the cases in 62 Ga. 495 were dismissed for want of jurisdiction. The opinion quoted that "the immunity from taxation granted to the Southwestern Railroad Company by its charter continues unaffected by merger or lease" is that of the Judge below; not of the Supreme Court. No one now doubts the correctness of the assertion so far as taxes may be *due by that company.*

The holding of the court in the case reported 64 Ga. 783 is inaccurately stated in appellees' brief. The question raised was, *what county* had *the jurisdiction* to enjoin the levy of taxes assessed against the Southwestern Railroad Co. It was held simply that it was immaterial in what county the lessee who had agreed to pay the taxes resided, the residence of the officer seeking to enforce them giving the jurisdiction.

The question whether the lessee owed ad valorem taxes as the *owner of property* was not remotely hinted at in any of these cases.

IV.

The contention that the leases amount only to definite terms of 101 years is untenable.

The original documents are in regular form grants of the property on certain conditions, to be had and held indefinitely. They are by the parties at interest styled

"*perpetual* leases" in their subsequent leases. Such leases are clearly, in a matter of taxation, to be treated as base fees, and the lessee owes the taxes:

Penick vs. Atkinson, 139 Ga. 649.

This estate passed to the Central of Georgia Railway Company by judicial sale and assignment. The taxable status of the property being thus fixed as between the State and the Central of Georgia Railway Company, no arrangement, agreement, or conveyance between the railroad companies could alter it to the detriment of the State under its present constitution.

But the second leases made no substantial modification, except as to the consideration to be paid. While the fixing of a term of 101 years, *renewable in like periods forever,* looks more like a technical lease, its *substantial effect* is the same; and in a question of taxation, ought not, when sought to be *substituted* by the parties for the other leases be construed to create an exemption.

> "Where the lease is in perpetuity, or *for a long term renewable forever,* it creates in the lessee a determinable fee, and the property is taxable to him:"
>
> 37 Cyc., 791, and citations.

The *habendum* is: "To have and to hold the same and every part thereof, with the appurtenances, to said lessee . . . for the full term of 101 years, and renewable in like periods upon the same terms *forever.*" Then in a separate sentence the words are added: "The right to renewals shall be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued."

If this last stipulation is in conflict with the former, as the last of two repugnant clauses in a deed, it must fail.

The first clause of the latter stipulation, however, is really ineffective; for as pointed out in the brief of Appellees, there is now no law prohibiting a perpetual lease in Georgia: if one should be enacted, it would not retroactively affect this lease. The second clause seems to have been inserted, not with any intention of *limiting the term to* 101 *years,* but on the mistaken idea that the lease might be injuriously affected by exceeding the life of the lessee. What the parties really meant is probably this: "Provided the corporate existence of the lessee is continued." This would operate as a *condition subsequent,* and should the corporate existence of the lessee fail, would give the lessor the right to enter and avoid the estate.

> "Conditions may be either precedent or subsequent. The former require performance before the estate vests; the latter may cause the forfeiture of a vested estate. The law inclines to construe conditions to be subsequent rather than precedent."
> Code of Georgia, 3717.
>
> "Upon breach of condition subsequent working a forfeiture, the person to whom the estate is limited may enter immediately."
> Code 3721.

Remembering that a "limitation" fixes the utmost time of continuance of the estate, while the "condition" marks some event on which it may be earlier defeated (16 Cyc., 607), we can construe the whole habendum clause harmoniously together, as *limiting* the estate in renewals *forever,* but with a *condition* that corporate death of the lessee *may* earlier defeat it.

This construction, however, would by no means alter *the effect* of the instrument, or the *estate it creates,* until the condition happens:

> "Estates upon condition subsequent have, *until*

defeated, the same qualities and incidents as though no condition was annexed thereto."

16 Cyc., 607, note 83.

It is the present policy of the State to provide for the renewal of limited charters:

Code 2823 (7), 2825.

This policy has been broadened to cover all charters, even after they have expired: Acts 1914, page 96.

V.

The absence of *words of succession* is immaterial. The language clearly, by *technical words appropriate for the purpose,* conveys a leasehold estate in perpetuity. There is no room for construction. Words of succession were not necessary in a conveyance to a corporation, even at common law, when words of inheritance were so scrupulously insisted on to make an inheritable estate in natural persons:

13 Cyc., 644, note 88.

In Georgia, words of inheritance or succession are never necessary, but the largest estate the words can be construed to make, passes:

Code 3659.

Nor is the omission of "assigns" significant. A leasehold estate being clearly created, it is vendible by law, as other property is.

VI.

In matters of exemption from taxation, the determination of the incidence of taxes ought to be on broad principles of substance rather than on technical niceties of title. Otherwise legal ingenuity will often succeed in

improperly defeating the broad principles of equality in taxation among all citizens, and incidentally affecting the equality of burdens under which it is now considered that the railroads should operate.

It cannot be denied that the Central of Georgia, save for the conditions subsequent, such as non-payment of rent, has every use and control of this property that it is possible to have. By express stipulation of the latter leases:

> "The said lessor shall give to the lessee exclusive possession, and control of the said lessor's railroad and its appurtenances, and all other property of the said lessor, and permit it to exercise through its proper officers *henceforth* all its franchises and all rights and privileges and control over the same which the said lessor had or might have exercised over and with regard to the same if this demise were not made, except as to the organization of the lessor."

The lessor did all but suicide.

In Wells vs. Savannah, 87 Ga. 399, it is said:

> "To which side the artificial logic of these niceties would incline the scale is immaterial, for the solid, practical subject of taxation must be dealt with on broader principles. The value of property consists in the use, and he who owns the use forever though it be on condition subsequent, is the true owner of the property for the time being."

And on page 401:

> "Relatively to the question of taxation, it makes no substantial difference whether the estate or property of the beneficial owners be classed as realty or personalty; whatever property of either kind belongs to them is taxable ad valorem."

So in Norfolk vs. Perry, 108 Va. 28, it is said of a lease for 99 years renewable forever:

> "While technically the relation of landlord and tenant exists between the City of Norfolk and the appellees under the terms of the contract to which we have adverted, it is manifest that the appellees are the substantial and real owners of the property upon which the tax in question is assessed. They have the right of possession, use and occupation forever upon payment of the stipulated rent of $22.50 per annum, and they can assign or devise the same, and in all essential respects so far as liability for taxes is concerned, appellees are in the position, with respect to this property, that an ordinary fee simple owner would be. . . . In such a case, certainly for the purposes of taxation, the mere legal title remaining in the landlord will be disregarded, and the burden of taxation placed where it belongs, upon the lessee to whom the value and benefit belongs."

These cases, though called "ground rent" cases, and sought to be distinguished because of the smallness of the rental involved, are not so distinguishable in principle. The rent reserved in both was what the premises in their then condition were *fairly worth* for rent at the time of the lease. The disproportion has come with the lapse of time and improvement of the property. It is worthy of note that as to the Savannah ground rents, involved in the Wells case, the rental was five per cent *on the market value* of the lots as ascertained by a public sale of them: in the latter leases involved here, the rental is *five per cent* of the *capital stock* of the lessor, and as *all* its property is leased, it represents the probable original cost and value of the property. There is no impossibility that this rental, by improvement of the property, and natural in-

crease in its value, may not in 100 or 200 years be as much disproportioned to the value of the property as ground rents in Savannah and Norfolk now are. As with that property, the lessees here have all the risk of appreciation or depreciation or destruction. Though business be good or bad, income large or small, their obligation is fixed. The rental reserved in the leases for such long periods is not the "rents and profits" of the property, but more in the nature of an *annuity* charged on the land.

That in the Savannah leases there was an *option* to buy at a fixed price did not alter the *estate* that the lessee had so long as the option was not exercised. Having an option to buy land gives the holder of the option no interest in the land. There was no such option in the Norfolk leases.

The liability of a dowress for the entire taxes on the land was put in Georgia, not on her having a freehold estate, but on her obligation to preserve and protect the property during her term, under the statutes of this State:

> "It is conceded that if this tax were specific, or if it were an income tax, she would be bound for its payment, and we can see no difference in this respect between that and an ad valorem tax. The difference, abstractly considered, consists only in the mode of assessment. In neither case is the assessment made for a longer period than a year. It is not assessed upon the reversion, but upon the value of the estate at the time, and which may fluctuate during the plaintiff's term. As she, by the express provision of Code sect. 2255 (Code of 1911, Sect. 3666), is entitled to the full use and enjoyment of the property during her life, it is insisted by the same law that . . . she exercise the 'ordinary care' that a 'prudent person' should exercise for its preservation an dprotection . . . It is

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 161

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, APPELLANT,

vs.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, APPELLEE.

BRIEF FOR APPELLEE.

I.

STATEMENT OF THE CASE.

On November 21st, 1911, William A. Wright, as Comptroller General of the State of Georgia, demanded of Central of Georgia Railway Company, that it should return for ad valorem taxation, the Augusta & Savannah Railroad and certain portions of the Southwestern Railroad, both of which the

Central of Georgia Railway Company and its predecessor had been operating for many years under lease contracts, and which had been theretofore taxed, in accordance with special provisions of their charters, on the income basis. The Central of Georgia Railway Company made a return of both railroads under protest (Record, page 17), and the Comptroller General thereupon issued several executions against the Central Company for state, county, municipal and school district taxes for the year 1911, on said Augusta & Savannah Railroad and on said Southwestern Railroad. The Central Company then filed its bill in equity against the Comptroller General, in the District Court of the United States for the Northern District of Georgia, to enjoin the enforcement of said tax executions, on the grounds that the obligation of the contracts was impaired by taxing the Augusta & Savannah Railroad and the Southwestern Railroad Company contrary to the provisions of their charters, and that the taxation of said two railroads to the Central Company as the owner when in point of fact it was the lessee, was contrary to the Fourteenth Amendment of the Constitution of the United States. The District Court, on final decree, enjoined the enforcement of said executions, and the Comptroller General took this appeal.

II.

The Charter Provisions with reference to taxation of the Augusta & Savannah Railroad and the Southwestern Railroad Company.

The name of Augusta & Waynesboro Railroad was changed to Augusta & Savannah Railroad.

Act Feb. 16th, 1856, p. 185.

Section 13 of the charter of the Augusta & Waynesboro Railroad provides: "That the said railroad, and the property of said Company, shall not be subject to be taxed higher than one-half of one per centum on its annual income; and

no city or town corporation shall have power to tax the stock of said Company, but may tax any property, real or personal, of said company, within the jurisdiction of said city or town, in the same ratio of taxation of like property."

Act of December 31st, 1838, p. 174.

Section 14 of the charter of the Southwestern Railroad Company provides: "That the said railway and its appurtenances and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its annual net income."

Act Dec. 27th, 1845, p. 132.

Section 5 of the charter of the Muscogee Railroad Company provides: "That the capital stock of said Railroad Company shall not be taxed by the state higher than one-half of one per cent. upon its net income, nor shall any other tax be levied or collected on the stock of said Company."

Act Dec. 27th, 1845, p. 116.

The Muscogee Railroad Company was united to and consolidated with the Southwestern Railroad Company under the charter of the latter.

Act March 4th, 1856, p. 187.

The charter of the Muscogee Railroad Company applies only to the line from Butler to Columbus.

Paragraph 15 of the Bill; Record, p. 69.

The Charter provisions of the Southwestern Railroad Company and of the Muscogee Railroad Company with re-

The execution in this case asserts on its face that the Central Company is the owner of the property. The assessment is made against it as the owner, and the property is assessed at its full valuation. The assessment is not partly legal and partly illegal; it is wholly illegal. It is not possible to separate the value of the leasehold interest from the value of the property, so far as the execution is concerned.

Under the statutes of Georgia, the value of the property is fixed first by the return of the tax payer, and if the Comptroller is dissatisfied with the returns, he has the right to assess. If the taxpayer is dissatisfied with his assessment, the law provides for an arbitration of value. The law under which this assessment is made does not provide any remedy for reaching the amount of the assessment after the process of arbitration is complete.

A court of equity could not substitute its judgment of the value of the leasehold interest for the method provided by law for the ascertainment of the value of taxable property. A court of equity could not assess the property. The Comptroller General, in order to subject the leasehold interest of the Central to taxation, would have to follow the statute, make a new assessment, and arrive at the value of the leasehold interest in accordance with the provisions of the statute.

In the case cited below, the Court, with the aid of the jury, found the value of the property. This was not a bill in equity, but was a statutory proceeding by affidavit of illegality, and the Court held that under the affidavit of illegality the law which furnished the remedy permitted the Court to go into the question of the value. At the time when that case arose, there was no provision of law for arriving at the value of property by arbitration, as there is now.

State vs. S. W. R. R., 70 Ga., 11, 26, 27, 28.

"One of the reasons why a Court should not thus interfere as it would in any transaction between individuals, is that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. These officers and the manner in which they shall exercise their functions are wholly beyond the power of the Court when they are so acting. The levy of taxes is not a judicial function. Its exercise by the Constitutions of all the States and by the theory of our English origin is exclusively legislative."

State R. R. Tax cases, 93 U. S., 575, 614.

"The present case is not one in which—as in most of the cases brought to enjoin the collection of taxes or the enforcement of special assessments—it can plainly be seen from the showing made by the pleadings, that a particular amount, if no more, is due from the plaintiff, and which amount should be paid or tendered before equity would interfere. It is rather a case in which the entire assessment is illegal. In such a case it was not necessary to tender, as a condition of relief being granted to the plaintiff, any sum as representing what she supposed or might guess, or was willing to concede, was the excess of cost over any benefits accruing to the property. She was entitled, without making such a tender, to ask a court of equity to enjoin the enforcement of a *rule* of assessment that infringed upon her constitutional rights. In our judgment, the Circuit Court properly enjoined the enforcement of the assessment as it was, without going into the proofs as to the excess of the cost of opening the street over special benefits."

"It should be observed that the decree did not relieve the abutting property from liability for such amount as should be properly assessed against it. Its legal effect as we now adjudge, was only to prevent the enforcement

of the particular assessment in question. It left the village in its discretion to take such steps as were within its power to take, either under existing statutes, or under any authority that might thereafter be conferred upon it, to make a new assessment upon the plaintiff's abutting property for so much of the expense of opening the street as was found upon due and proper inquiry to be equal to the special benefits accruing to the property. By the decree rendered, the Court avoided the performance of functions appertaining to an assessing tribunal or body, and left the subject under the control of the local authorities designated by the State. Such a decree was more appropriate than one enjoining the assessment to such extent as, in the judgment of the Circuit Court, the cost of the improvements exceeded the special benefits."

Norwood vs. Baker, 172 U. S., 269, 293-294.

"But it has been explicitly held by the Supreme Court of the United States that this rule has no application to a case where the entire tax fails by reason of an illegal assessment, and that in such a case the assessment may be enjoined without the payment or tender of any portion of the tax, since it is impossible for the Court to determine what portion is actually due. We now hold that the assessment made in this case was not in conformity with the statute, is therefore without authority and illegal, and should be restrained. The pleadings in the case furnished to us no means of discriminating and ascertaining what portion of the assessment would be due if the assessment had been made in conformity to the law, and we must, therefore, hold that the whole assessment as made must fail, notwithstanding the fact that no part of the assessment was paid or offered to be paid. We do not here make a rule precluding the collection of the amount due from the abutting property when the assessment shall be properly made, holding, as

we do, that contracts under which the work was done, were such as the corporation was authorized to make."

Jones, et al vs. Holzapfel, et al, 11 Okl., 405; 68 Pac., 511, 516.

"An assessment is indispensable in proceedings to enforce the collection of taxes. Until an assessment of a per centum tax is made, the amount of the tax is not fixed. Tax proceedings are *in invitium* and to be valid the statute must be followed, and no tax on property can be collected until it has been assessed * * * the rule is well grounded and followed in this State that where the statute provides for an assessment by a ministerial officer, the assessment must be made by him and not by the courts."

State vs. Western & Atlantic R. Co., 136 Ga., 619.

"Under the revised statutes of Texas, Article 4691, providing that property held under lease for a term of three years or more belonging to this State or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all purposes of taxation, as property of the person so holding the same, except as otherwise provided by law. Waterworks leased for a term of 25 years from a city cannot be assessed against the lessee *at the value of the land, but only at the value of the leasehold interest, if at all.*" (Head note.)

"It is not necessary for us to inquire whether the appellees are liable to taxation on their leasehold estate. No assessment of that was made, and the Courts could not make the assessment, if on inquiry, it should be found that the leasehold held by the appellees was subject to taxation." (From the Decision.)

State vs. Taylor, 72 Texas, 297; 12 S. W., 176.

VI.

ANALYSIS OF THE LEASES.

The leases of both railroads are made under the authority of the Act of Jan. 22, 1852 (Acts 1852, p. 119), the material portions of which are as follows:

> "An Act to authorize the Central Railroad and Banking Company of Georgia to lease and work such railroads as now connect or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have or may hereafter have their respective Railroads connecting with the said Central Railroad to make leases thereof for a term of years, or during the continuance of their respective Charters.
>
> "Sec. I. Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Central Railroad and Banking Company of Georgia to lease and work for such time and on such terms as may be agreed on by the parties interested, the Augusta & Waynesboro Railroad, the Milledgeville and Gordon Railroad, the Eatonton Branch Railroad, the Southwestern Railroad, and such other Railroads as now connect, or may hereafter connect with the Central Railroad, and to collect, by suit or otherwise, the fares of travel and the charges of transportation on Railroads so leased.
>
> "Sec. II. And be it further enacted by the authority aforesaid, That the respective Boards of Directors of

the incorporated Companies owning the Railroads above mentioned, or owning such other Railroads as now connect or may hereafter connect with the Central Railroad shall have power and authority so to lease to the Central Railroad and Banking Company of Georgia their respective railroads for such term of time and on such other terms as they respectively may deem best."

Section 18 of the charter of the Augusta & Waynesboro Railroad (the name of which was changed to Augusta & Savannah Railroad), provides:

"And be it further enacted by the authority aforesaid, that the said Company shall be authorized to contract and agree with the Central Railroad and Banking Company, as to the union of said railroad with the Central Railroad, and for other purposes relative to the interests of the said Company, etc."

The fact that a lease was made under the Act of 1852 of the Augusta & Savannah Railroad, and that it was not united with the Central Railroad and Banking Company under the 18th section of its charter, is the strongest evidence that the intention of the parties was not to convey title or to sell the Railroad or dispose of it in such a manner as to make the Central Railroad and Banking Company the substantial owner of the property.

Neither the charter of the Augusta & Savannah Railroad, nor the Southwestern Railroad's charter, nor the Muscogee Railroad's charter confers any power or authority to convey the title or make a sale of their respective railroads.

The documents are all in the form of leases, use the language of a lease, and provide in each instance for a demise of the property and for the payment of rent. All of the lease contracts have defeasance clauses, except the first lease of the Augusta & Savannah Railroad. In all of the leases

the lessees agreed to pay taxes which might be lawfully imposed upon the lessors or their property except that in the case of the first lease of the Augusta & Savannah Railroad the taxes imposed by the State of Georgia were to be paid by the Augusta & Savannah Railroad.

The term of the old leases is during the corporate existence of the lessors. Those leases were perpetual leases because the corporations had perpetual charters. The term of the new leases is "for the full term of 101 years, and renewable in like periods upon the same terms forever. The right to renew shall be in conformity to the laws authorizing it and for the period that the corporate existence of the lessee may continue." The present lessee, Central of Georgia Railway Company, is incorporated under the general railway law, and under code section 2584 it is provided that its charter "shall not continue for a longer period than 101 years, unless the same is continued by the laws of force at the expiration of 101 years." There is no law in existence now authorizing the extension of the corporate existence of the lessee beyond the term of 101 years prescribed by its charter.

The 10th, 11th and 12th paragraphs of the bill, which are admitted by the answer, state the manner in which the Central of Georgia Railway Company succeeded to all the rights, powers and privileges of the Central Railroad and Banking Company of Georgia, and also state the conditions under which the leases were made to the Central of Georgia Railway Company. Whether the present leases should be considered as mere renewals and modifications of the old leases, or whether they should be considered as entirely new leases is immaterial. The validity of the leases is not challenged. There is not a word in the leases which can be construed as indicating an intention to sell. The words "successors or assigns" are not used in the leases.

The Railroad is referred to in several places as the "Lessor's Railroad." The lessee agreed to pay "all damages

to persons or property adjudged or decreed against the lessor as *owner* of the property and franchises therein demised."

The allegation in the demand made by the Comptroller General to return these two railroads for taxes (Record, p. 2), in which he says: "I am advised that these roads have been purchased by the Central of Georgia Railway Company at judicial sale under decree of foreclosure against your immediate predecessor in title and under leases in perpetuity," is not true in point of fact. The only thing ever purchased by the Central of Georgia Railway Company was the *leasehold interest* which was formerly held by the Central Railroad and Banking Company of Georgia.

VII.

The leases did not cast the ownership of the property upon the Central, nor were the tax provisions of the charters impaired or affected by the leases.

In 1874 the State of Georgia attempted to repeal the tax provisions of the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company and to tax them on the ad valorem basis. The leases were in existence at this time. It was not even suggested that the leases had the practical effect of nullifying the tax provisions of the charters.

State vs. Augusta & Savannah R. R., 54 Ga., 401.
Southwestern R. R. vs. State, 54 Ga., 401.

The latter case being reversed in:

Southwestern R. R. vs. Georgia, 92 U. S., 676.

Again in 1877 the Comptroller General of the State issued executions for taxes against the Augusta & Savannah Railroad on the ad valorem basis. The lease was before the Court.

It was held (h. n. 3): "The Act authorizing the lease not having any provision in regard to taxation, the limit in its charter was not lost or changed by the lease."

The decision was obiter because the case was dismissed for want of jurisdiction.

Goldsmith vs. Augusta & Savannah R. R., 62 Ga., 468.

In the case cited below the Comptroller General of the State of Georgia made the point that the lease of the Southwestern Railroad was an alienation of the railroad and that the tax provision of the charter was thereby lost (page 496). The Lower Court held (page 499): "That the partial immunity from taxation granted in the charter of the Southwestern Railroad Company, as well as to the Muscogee Railroad Company in its charter, continues unaffected by merger or lease." This case went off in the higher court on a question of jurisdiction.

Goldsmith vs. Southwestern R. R., 62 Ga., 495.

Again the State of Georgia undertook to tax the Southwestern Railroad contrary to its charter and Wright, Comptroller General, the same appellant here, made the point that the Southwestern Railroad Company had no right to maintain the bill because the Central Railroad and Banking Company of Georgia had leased its road and bargained to pay its taxes (page 788). The Court sustained the bill and held that the lines of the Southwestern, which are involved in the case at bar, were taxable in accordance with the charter provision and not otherwise.

Wright vs. Southwestern R. R., 64 Ga., 783.

The lease of the Macon and Western Railroad to Central Railroad and Banking Company of Georgia was substantially identical with the old lease of the Southwestern Railroad. The

Macon and Western lease was "for and during the entire continuance of the corporate existence of the said Macon & Western Railroad Company under its present charter or any amendment or extension thereof that may hereafter be made." The Macon & Western lease provided for an amalgamation of the stocks of the two companies, when legislative authority might be given. The contention was that the paper was not a lease but was a sale and therefore was ultra vires. The Court decided (pages 646 and 647) as follows:

> "What is the character and effect of the instrument set forth in the record as the evidence of the contract between the two companies, when construed and interpreted in accordance with the acknowledged principles of the law applicable to such an instrument? It purports on its face to be a *lease* of the Macon & Western Railroad to the Central Railroad, and recites the provisions of the charter of the Macon & Western Railroad Company, which authorizes that Company to rent or farm out its exclusive right of transportation on said railroad with the privileges thereof, to any individual or individuals or other company. It also recites the provisions of the Act of 1852, which authorizes the Central Railroad to *lease connecting roads*, and it is quite clear on the face of the instrument that it was *the intention* of the parties to make *a contract for a lease of the road, and not a contract for the sale and absolute conveyance of the title to the road.* In the construction of the deed, if there be two clauses utterly inconsistent, the *former* must prevail, but the *intention* of the parties from the whole instrument, should, if possible, be ascertained and carried into affect; Code 2655. The cardinal rule for the construction of contracts is to ascertain *the intention* of the parties. If that intention be clear, and it contravenes no rule of law, and sufficient words be used to arrive at the *intention*, it shall be enforced, irrespective of all technical or arbitrary rules of construction. The intention of the parties

VIII.

The length of time does not affect the character of the leases. These leases are not perpetual, but even if the term was perpetual they would still be leases.

The caption of the Act of January 22, 1852, under the authority of which these leases were made, contemplates a lease for the term of the charter of the Lessors, which was perpetual. When the new lease came to be made with the Central of Georgia Railway Company it could not be made for a longer period than 101 years because that was the limit of its charter existence. While the new leases provided that they were renewable for like periods, forever, this was followed by the sentence "The right of renewal shall be in conformity with the laws authorizing it and for the period that the corporate existence of the Lessees may be continued." There is no law in existence authorizing the renewal of the lease, nor is there any law in existence under which the period of the corporate existence of the Lessees may be continued, hence the lease is for a definite term of 101 years. The statute of the State of Georgia which authorizes the lease makes the document a lease, and there is no room for construction left.

The lease of the Macon & Western Railroad to the Central, although it was perpetual, was held to be a lease and not a conveyance of title.

> Central Railroad vs. Mayor and Council of Macon, 43 Ga., 646.

Code section 3685 provides, in defining an estate for years: "It may be for any number of years, so that the limitation be within the rule against perpetuities."

In the first place, this is not an Estate at all; it is a mere usufruct only. In the next place a lease does not suspend

the power of alienation, and therefore leases for a longer time are not in violation of the law against perpetuities.

18 A. & E. Enc. of Law, page 611;

22 A. & E. Enc. of Law, page 706;

First National Bank vs. Sioux City Terminal Co., 69 Fed., 441;

Toddhunter & Williamson vs. D. M. & C. R. R., 58 Iowa, 205; 12 N. W., 267.

"The length of the time for which a lease is to run cannot change the principle which governs the kind and character of the estate conveyed, though an estate be made to run for a thousand years it is none the less an estate for years and none the less controlled by the principles which govern the class of estates to which it belongs." (See numerous cases cited).

Moss Point Lumber Co. vs. Board of Supervisors, 89 Miss., 448; 42 Sou. Rep., 290.

The length of a lease does not affect its validity, nor does the fact that the term of the lease extends beyond the life of the corporation affect its validity.

Underhill on L. & T., Sec. 54.

Hill vs. A. & N. C. R. R., 143 N. C., 539; 55 S. E. 854, 865.

Dickinson vs. Consolidated Traction Co., 119 Fed., 871.

Tate vs. Neary, 65 N. Y., Supp. 40.

U. P. Ry. Co. vs. C. R. I. & P. Ry. Co., 51 Fed., 309, 328, affirmed 163 U. S., 564, 592.

Brown vs. Schleier, 118 Fed., 965, 984.

Nichol vs. R. R. Co., 12 Barb., 460, 465, affirmed 12 N. Y., 121.

People vs. O'Brien, 111 N. Y., 1; 18 N. E., 692.

Noyes on Intercorporate Relations, Sec. 201.

23 A. & E. Enc. of Law, p. 781.

Chi. & A. Ry. vs. People, 153 Ill., 409; 38 N. E., 1075.

5 Thompson on Corporations, Sec. 5896.

Baldwin Am. R. R. Law., 458.

A lease to a railroad for a term of years however long does not create a perpetuity.

Todhunter & Williamson vs. D. M. & C. R. R., 58 Iowa, 205; 12 N. W., 267.

First Nat. Bank vs. Sioux City Terminal Co., 69 Fed., 441.

18 A. & E. Enc. of Law, p. 611.

22 A. & E. Enc. of Law, p. 706.

IX.

Particular cases in which the Lessor in a perpetual lease was held to be the owner for purposes of taxation.

"The fact that the bridge is under lease to a railroad company *forever* at a fixed rental subject to a defeasance in case of failure by the lessee to comply with its terms, does not disturb the ownership by the Bridge Company within the meaning of the revenue law (H. N. 2.)"

"It is clear from this statement of the substance of the instrument that notwithstanding the long term the tenancy may nominally endure, the paramount title remains in the Bridge Company. The lease is subject to a defeasance in event of any failure on the part of the Railway Company to meet all its requirements, and its entire scope and effect exclude the notion of an attempt to transfer the title outright. This view of it results in the rule that the property is yet owned by the Bridge Company within the meaning of the Section for the taxing of bridges." (p. 422).

State vs. Miss. River Bridge Co., 109 Mo., 253; 19 S. W., 421.

State vs. Miss. River Bridge Co., 134 Mo., 321; 35 S. W., 592.

The Lessor of real estate is the owner thereof within the Acts of 1889 declaring that all property shall be assessed in the name of the owner. In this case, the lease was for a period of 99 years. On p. 773:

"It cannot be presumed that it was the intention of the Legislature to change the common law relations existing upon this subject between Lessor and Lessee and life tenant and remaindermen, without a clear indication of such intent in the language of the statute. No such clear intent appears. The use of the word "owner" is not sufficient to effect this result. The chief purpose of the Legislature was to provide public revenue. It had no thought of changing the mutual relations and obligations existing between citizens of the State with respect to property, but on the contrary, the Legislature must be presumed to have acted in view of existing law regulating these rights. It sufficiently

meets the provisions of the Act of 1889 to hold that the Lessor is the owner in the sense of the tax laws."

E. T. V. & G. R. R. vs. Morristown, 35 S. W., 771 (Tenn.)

A bridge company leased its bridge to a railroad company forever, subject to the condition that if the Railway Company should fail to pay the rent or to keep its covenants in the lease, the lessee might re-enter. Held that the Bridge should be assessed by the Township assessor as the property of the Bridge Company, and not by the State Board of Equalizers as railroad property, since the railroad company did not by said lease become the owner of the bridge. The Court said, on p. 1076:

"The lease is not, however, in absolute perpetuity, but may terminate at any time upon default of the lessee to keep and perform its terms and conditions, and on its face recognizes the paramount ownership of the property as remaining in the Lessor. The terms and conditions of this conveyance are all inconsistent with an intention to pass the absolute title to the Lessee. It is, to all intents and purposes, but a lease, though for a term which may continue for all time, the absolute ownership remaining in the Lessor."

Chicago & Alton R. R. vs. People, 153 Ill., 409; 38 N. E. 1075.

A bridge built by a corporation organized for that purpose is not the property of a railroad company and assessable for taxes as such by the State Board of Railway Commissioners, though the stockholders of both companies are the same, and all of the Bridge Company's stock is pledged to the Railway Company, which by contract has the permanent use of the bridge.

St. L. & S. F. vs. Williams, 53 Ark., 271; 13 S. W. 796.

The plaintiffs conveyed to the defendant by deed a right of way along the street in front of their lots. The deed contained an agreement—"that in case the second party shall sell the above mentioned right of way to any other company, the party of the first part shall be entitled to receive one-half of the purchase money." The defendant leased to another company its entire railroad property, including this right of way, reserving rent payable quarterly for a term of 999 years. Held that the lease did not constitute a sale of the right of way.

Morrison vs. St. Paul & N. P. Ry., 63 Min. 75; 65 N. W. 141.

X.

THE LESSOR IS LIABLE FOR TAXES.

At common law, the Landlord is liable for the taxes when the lease or the statute imposing the taxes is silent on the subject.

Taylor's Landlord & Tenant, Sec. 341, 342.

Cooley on Taxation, p. 822.

Underhill on Landlord & Tenant, p. 1005.

E. T. V. & G. R. R. vs. Morristown, 35 S. W., 771.

At common law, *a life tenant* is liable for taxes, but a *tenant for years is not.*

Taylor's Landlord & Tenant, Sec. 318 (a).

Cooley on Taxation, p. 818.

"The Lessee's assumption of the payment of taxes and assessments does not relieve the Lessor from his liability for them to the State or municipality, nor does it enable the taxing authority to secure a personal judgment against the lessee."

Cooley on Taxation, p. 823.

The covenant by the Lessee to pay taxes is merely an obligation to pay taxes for which the lessor is liable.

Underhill on Landlord & Tenant, Sec. 605, 606, 607, 618.

Where a lessee covenants to pay taxes it is a promise to pay what the Lessor owes to the State and is really due to the lessor as part of the rent.

Perrins, Etc. Co. vs. Cook, 118 Mo. Ap. 44; 93 S. W. 337.

Elliott vs. Grant, 64 Mo. App. 248.

Aught vs. Orchard, 92 Mo. App. 466.

McManus vs. Shoe Co. 60 Mo. App. 216.

Gedge vs. Shoenberger, 83 Ky. 91-94.

It is due as rent to the Lessor:

Bodwitch vs. Chickering, 139 Mass., 283; 30 N. E. 92.

Amory vs. Melvin, 112 Mass., 83, 87.

Carnes vs. Hersey, 117 Mass. 267.

In this State there is no change at all in the common law as to the lessor of an estate for years being chargeable with the taxes.

XI.

Under the Georgia Statute taxes are chargeable against the Owner of the Property and the Lessor is the Owner in the Purview of the Statute.

"Taxes are to be charged against the owner of property if known, and against the specific property if the owner is not known. Life-tenants, and those who own and enjoy the property, are chargeable with the tax thereon. Hence, while the public may treat property as belonging either to the maker or the holder of a bond for titles, when the latter is in possession, yet as between the parties the one receiving the rents or enjoying the use is liable for the tax."

Code Section 1018.

There is nothing in the above code section which suggests that the tenant is liable for taxes on the property, either primarily or as between himself and the landlord. The well established rule is that the lessor is liable for the taxes. This is not a case where the owner is unknown. It is inconceivable that the taxing officer, by an arbitrary selection of the person against whom he will assess the property, can break down the contract contained in the charter.

The holder of a bond for titles has an estate in the property and when in possession of the property he enjoys the property itself and its rents and issues. He is not only primarily liable for the taxes but liable as between himself and the maker of the bond for titles. A life tenant is liable for taxes because he is in possession of the property and enjoys the rents and profits of it. The person who owns a homestead and is in possession likewise pays the taxes because

he is in possession and in enjoyment of the rents and profits. But in the case at Bar the lessee, instead of enjoying the rents and profits of the property, has to pay a heavy rental for its enjoyment, and its possession is not by virture of ownership but because it pays an annual rental. Its possession is dependent upon punctual payment of the rent.

Code Section 1018 is not of statutory origin but is a codification of the three decisions shown on the margin of the code section.

In the case cited below, from which the code section is partly codified, the person against whom the property was taxed was in possession not only as "a holder of a bond for title but under an absolute deed conveying the property to her." She enjoyed the rents and profits of the property.

National Bank of Athens vs. Danforth, et al., 80 Ga. 55, 56.

In the case cited below, from which the code section is also partly codified, it is held: "The official assessors are at liberty to return property as belonging to unknown owners, but not to ascribe ownership to any and every person indifferently. Doubtless they can treat as owner any person in possession when they are unable to fix ownership on any one else, for possession is a mark of ownership."

Burns vs. Lewis, 86 Ga., 591, 600.

The case in 87 Ga. 399, which is one of the Savannah Ground Rent Cases, and which is cited on the margin of the code section, is especially hereafter discussed.

"In this State, the universal rule, unless some statute can be shown to vary it in particular instances, is that taxes are to be charged upon the owners of property. Owners, there-

fore, have an interest in being properly designated in executions which issue for the collection of taxes upon their property, or if they cannot be designated with reasonable certainty, that the property shall be pointed out in the executions as authority for seizing it irrespective of ownership, or as the property of some particular person."

Burns vs. Lewis, 86 Ga. 591, 602.

See also:

Sheibley vs. City of Rome, 107 Ga. 384.

Norris, et al. vs. Coley, 100 Ga. 547.

Justice vs. Parnin, 130 Ga. 869.

On the argument in the Court below, counsel for the appellant read an extract from the case cited below as follows:

"Any right which, in law or equity amounts to an ownership in the land; any right of entry upon it, to its possession or enjoyment, or any part of it, which can be deemed an estate in it, makes the person the owner." In that case the question was whether a mortgagee was an owner under the code section which permits the owner to redeem land from a tax sale. It was held that the mortgagee was not an owner because under the statute law of Georgia a mortgage does not pass title. The quotation was taken by the Court from another decision to prove the broad interpretation which had been given to the redemption statute.

Mixon vs. Stanley, 100 Ga. 372.

On the argument below, counsel for the Appellant also referred to an extract in the case cited below that "the lessee was, for the term of the lease, the absolute owner of the property." The only question in that case was whether the contract created the relation of landlord and tenant, or a partner-

At that time, the City of Norfolk had no taxing power. In 1906, the land was assessed for taxation at $21,000, and the buildings at $6,500, and the City of Norfolk in the meantime having acquired the power of taxation, taxed the land and buildings to the holder of the perpetual lease as though he were the owner of the property. The Court of Appeals of Virginia (108 Va. 28; 61 S. E., 867), decided that the contract created the technical relation of landlord and tenant, but that the lessee was the virtual owner of the property, because the value and the benefit of the property belonged to him, and that for the purposes of taxation it would regard him as the owner.

The Supreme Court of the United States held that the contract was more than a mere lease. The contract contained a stipulation that:

> "If there should be arrears for three years in paying the rent or taxes, the town should advertise and lease out the lots and improvements for the remainder of the term of 99 years, the said Lee and his assigns to make good the deficiency, if any, between the first and last prices, together with all arrears of rent and taxes, the overplus, if any, to be paid over to said Lee or his assigns."

The Supreme Court of the United States observed (p. 478):

> "Selling a city's property to pay rent due the city is not at all consistent with the idea of a mere lease. It indicated rather that the tenant had a substanial interest in the property which was security for the payment of whatever he owed the city. The contract creates an estate somewhat like the perpetual lease of the civil law where a tenant was for many purposes treated as the owner and liable for taxes."

"It was also similar in its nature to a ground rent where annual rental and public taxes are perpetually charged on the land instead of a gross sum being paid or secured. There the grantor is treated as having a fee in the rent reserved, and the grantee a fee in the land subject, among other things, to the payment of public taxes."

Both the Court of Appeals of Virginia and the Supreme Court of the United States held that there was no exemption in the case, that the lessee agreed to pay all public taxes, and while the City of Norfolk did not have the right to tax at the time the lease was made, there was nothing in the contract expressed or implied which limited the power of the Legislature to grant to the City of Norfolk the right to tax property thereafter.

Here was a case in which the property was valued at $27,500.00 and the annual rental was £6.6. The property was leased forever by the City. It is clear that, without regard to the technical terms of the lease in this case, the lessee was the substantial owner of the property; he paid a nominal rental. The lessee owned the value of the property; he had the substantial enjoyment of the property and paid practically nothing for it. It was fair and right on every consideration that the City should tax him as the owner of the land. But in the case at bar the Central Company pays a large rental for the use of the property, in addition to paying the taxes and keeping the property in repair, and also pays the expenses of the corporate organization of the lessor. It pays a substantial amount for that which it enjoys, and it does not enjoy it as the owner enjoys his property. The value of the property does not belong to the Central of Georgia Railway Company. It would be a perversion of terms to call the Central the owner.

J. W. Perry Co. vs. Norfolk, 220, U. S., 472;

City of Norfolk vs. J. W. Perry Co., 108 Virginia, 28; 61 S. E. 867.

The case cited below merely sustains the proposition that a leasehold interest is taxable to the lessee where there is a special statute of the State providing for the taxation of leasehold interests. In that case, the statutes of Mississippi provided expressly for the taxation of leasehold interests to the lessee. The lands were leased by the State for 99 years, renewable forever.

Street vs. Columbus, 75 Miss., 822.

The case cited below is one in which the City granted to the Railroad certain property within the corporate limits of the City for its right of way, depots, stations and warehouses. The Court held that without regard to the question as to where the naked legal title was held, the Railroad was substantially the owner of the property and taxable with it. There is nothing in this case which touches the point at issue. The Central pays taxes on all of its rights of way in Georgia, and similar easements to which it does not hold the absolute title.

City of Muscatine vs. C. R. I. & P. R. R., 79 Iowa, 645.

In the case cited below the City granted to a person a franchise to erect a toll bridge and to take toll for twenty-five years, the bridge at the end of that time to revert to the City. The Court held that the bridge was taxable to the assignee of the person to whom the franchise was granted, and that the City held only a revisionary interest. This was clearly not a case of lessor and lessee or of landlord and tenant. It was an outright grant of a piece of property for twenty-five years.

Fall vs. Mayor of Mayersville, 19 Cal., 391.

In the case cited below the lots were leased for a sum paid down in advance for the entire term, and the leases

were made to the lessee and his heirs and assigns forever. This was held to be a determinable or base fee, and that the lessees were to be regarded as the owners. While the instrument was called a lease it was manifestly a base fee, because the occupants paid down a lump sum in advance for the entire term and the term was alienable.

> Conn. Spiritualists Camp-Meeting Assn. vs. Town of East Lyme, 54 Conn., 152.

XIII.

These leases do not grant an estate, but merely create the relation of landlord and tenant, and all that the tenant acquired was the usufruct of the property.

It is not necessary to decide this point, because it is immaterial what may be the nature of the lease if the complainant it not the owner by virtue of the lease. The Comptroller General is not attempting to tax the leasehold interest. An entirely different case would be made if the tax was laid on the leasehold interest.

> "Code Section 3685: **Definition.** An estate for years is one which is limited in its duration to a period fixed, or which may be made fixed and certain. If it be in lands, it passes as realty in this State. It may be for any number of years, so that the limitation be within the rule against perpetuities."

> "Code Section 3687: **Rights of Tenants:** An estate for years carries with it the right to use in as absolute a manner as a greater estate, but not to the injury of the property or of the person entitled either in re-

mainder or reversion; the same acts of omission and commission which have been heretofore prescribed as grounds of forfeiture of an estate for life will operate to the same effect as against a tenant for years."

"Code Section 3690: **Lease.** When one grants to another an estate for years out of his own estate, reversion to himself, it is usually termed a lease. It may be confined to a particular interest in lands, such as mining or agricultural, in which no other interest passes. If no object of the lease is stated, the mining interest will not pass unless the circumstances justify an implication of such an intention in the parties."

"Code Section 3691: **Relation of Landlord and Tenant exists, when:** When the owner of real estate grants to another simply the right to possess and enjoy the use of such real estate, either for a fixed time or at the will of the grantor, and the tenant accepts the grant, the relation of landlord and tenant exists between them. In such case no estate passes out of the landlord and the tenant has only a usufruct, which he cannot convey except by the landlord's consent, and which is not subject to levy and sale; and all renting or leasing of such real estate for a period of time less than five years shall be held to convey only the right to possess and enjoy such real estate, and to pass no estate out of the landlord, and to give only the usufruct, unless the contrary be agreed upon by parties to the contract and so stated therein."

The common law does not make the distinction made by the above Code sections. So far as we can discover from the text books and the decisions on the subject of landlord and tenant, every tenant who had a lease for a term longer than a year, had an estate for years. Our code means to distinguish between a case where the mere use of the property is given, and a case where a qualified estate in lands is granted,

with a reversion to the grantor. In other words, where the relation of landlord and tenant exists, an estate is not granted. As long as rent is payable and the tenant attorns as tenant to the lessor, the relation of landlord and tenant exists. When a person grants outright to another an estate for a determinate period out of his own estate, with reversion to himself, then an estate for years is created, and not the relation of landlord and tenant. The lease in the case at bar clearly created the relation of landlord and tenant. The rental is fixed, payable semi-annually. No absolute estate is granted in the property for a term of years, and upon default in the payment of rent the landlord has the option to terminate the relation. This is clearly not an estate for years as contemplated by the code in contra distinction to the relation of landlord and tenant.

The fact that a lease is for a period of five years or more does not make it an estate.

In the case cited below, it was contended that all contracts for the rental of land for a term of five years or more created an estate in the land. The Court said, page 993:

> "Whether under a contract for the rent of land an estate in the land passes to the tenant, or whether he obtains merely a usufruct and no estate in the land, depends upon the intention of the parties, *and this is true without regard to the length of the term.* While under the code a contract of rental for a term of years less than five will generally be construed to give only a usufruct and to pass no estate, still such contract may have the effect of passing an estate to the tenant where it is manifest from the instrument containing the contract that such was the intention of the parties."

Hutcheson vs. Hodnett, 115 Ga. 990, 993.

Code Section 3691 was not intended to declare that the relation of landlord and tenant existed only in the case there declared, but that under the circumstances stated the relation existed.

Burnett & Bro. vs. Rich & Co., 45 Ga. 212.

The use of the term "lease" is not significant.

The word is commonly used to denote a contract which merely creates the relation of landlord and tenant, as well as one which is intended to create an estate. It is used indifferently in the Code.

Code, Sections 3690, 3691.

It was held in the case of the lease of the State railroad, which was for a term of 29 years:

> "In making the lease, the State reserved the right of forfeiture on broken conditions subsequent and imposed terms and conditions indicating that no estate was intended to be conveyed to the lessee but that the lessee was to have only a usufructuary interest during the lease period."

State vs. W. & A. Rd., 136 Ga. 619, 625.

See also

W. & A. Rd. vs. W. U. T. Co. 138 Ga. 420 (h. n. 6.)

"A tenant for life may by contract rent premises at a fixed annual rent, payable each year and stipulate that the contract shall continue in force for and during his life, without parting with his estate in the premises, there being in the contract no words of conveyance, and the language used all indicating an intention, not to sell and convey, but to create

a tenancy in consideration of rent to be paid, and not in consideration of a price as purchase money."

Sykes vs. Benton, 90 Ga. 402.

The fact that the Central has exclusive possession and use and enjoyment of the railroad does not indicate that it has an estate.

Code Section 3691, in defining a usufruct, defines it as "the right to possess and enjoy the use." Such a tenant has not only possession, but the *right* to possess.

> "A tenant, although he has no estate in the land, is the owner of its use for the term of his rent contract, and he can recover damages for any injury to such use."

Bentley vs. City of Atlanta, 92 Ga. 623, 627.

Under the terms of the lease, the lessor maintains its corporate organization, and all of its original obligations to the public are still of full force and effect, notwithstanding the lease.

Singleton vs. S. W. R. R. 70 Ga. 464.

Even if the lease created an estate for years, such estate is merely a chattel interest and not a freehold estate.

A lease for years is a chattel interest, although for a thousand years, and upon the death of the lessee passes to his executor.

Underhill on Landlord & Tenant, Sec. 37, citing cases.
2 Minor's Institutes, p. 165.

A lease for years is a chattel; a lease for life is a freehold estate.

Taylor's Landlord & Tenant, Sec. 14, 50.

"An estate for years is a contract for the possession of lands or tenements for some determinate period, and this period may be less than a year, as a certain number of months or even weeks. A tenant for years is never seized of the lands leased. He acquires the right to enter upon the land, and when he enters he is possessed, not of the land, but of a term for years, while the seisin of the freehold remains in the lessor, and the lessee's possession is the possession of him who has the freehold. 1 Washburn Real Prop. (6. Ed.), Sec. 612. A lease for a term of years is not a freehold estate, but a chattel. Field vs. Howell, 6 Ga. 423."

Hutcheson vs. Hodnett, 115 Ga. 990, 994.

A lease for 999 years is a chattel. .

Gay ex parte. 5 Mass. 419.

"As ordinarily employed, the word 'lease' implies a term and reversion to the owner of the land after its termination, and only a chattel interest passes. * * * * A decisive indication that the instrument was not intended as a technical lease, or to create a chattel interest, is that the lessee shall have and retain possession of the premises for himself, his heirs and assigns, so long as he complies with his contract."

Penick vs. Atkinson, 139 Ga. 649, 651.

In the case of the Georgia Railroad lease which was to William M. Wadley and his assigns, for 99 years, it has been

held that the lease did not create an estate, but the lessee held merely the usufruct of the property.

Louisville & Nashville R. R. vs. Wright, 199 Fed. 454.
Affirmed in
Wright vs. Louisville & Nashville R. R., 201 Fed. 1023.

XIV.

Even if the leases created an estate for years, such estate is not taxable under the statutes of Georgia, because successive estates in land are not taxed separately. The practice is to tax the property itself.

Again, it is not necessary to decide this question, because the Comptroller General is not attempting to tax the leasehold interest. He is trying to tax the whole value of the property to the complainant as the owner of it.

It is not the practice in Georgia to tax separate interests or successive interests or estates in real property. The property itself is taxed at its market value, and this satisfies the constitutional demand that all property in Georgia shall be taxed. The State may have power to pass a statute taxing the interest of a lessee in real estate, and that, too, without regard to the question whether the lease conveys an estate or is a mere usufruct.

> "It has properly and justly been held that a construction of tax laws was not to be adopted which would subject the same property to be twice charged for the same tax unless it was required by the express words of the statute, or by necessary implication. It is a fundamental maxim in taxation that the same property shall not be subject to a double tax by the same party, either directly or indirectly."

XVI.

JURISDICTION OF THE COURT.

There is no question in this case as to the jurisdiction of the Court. No such question has been made in the pleadings or in the argument. It is obvious, without citation of authorities, that if our contention is right, that the Comptroller General has arbitrarily selected the complainant as the owner of these two properties, when in point of fact it is not, the Comptroller General will thereby tax the complainant with the property of another person, which amounts to a taking of property without due process of law, and denial of the equal protection of law.

Complainant has a sufficient interest to make the point of impairment of the contract, because under the leases it has covenanted to pay all taxes which may be lawfully assessed upon the property, and if the complainant is the owner of these two railroads, the tax executions are a lien not only on all other property of the complainant, but on these two leased lines. Complainant has a distinct and definite interest in the contract, and it is no reply to say that the contract of exemption is personal to the lessors, and is not assignable.

The taxation of the property to complainant as the owner, and the refusal to tax it to the lessors as owners is a patent impairment of the obligation of the contract, and the impairment is an injury to complainant.

In the case cited below, the question was raised as to whether it was an impairment of the obligation of the contract to require a railroad company to carry freight at a rate which was confiscatory. The Court said that the corporation might make this question, and that a stockholder of that corporation could also make the question, because the stockholder was

pecuniarily interestet in, equitably indeed the beneficial owner of the property of the corporation.

> Ragan vs. Farmers Loan and Trust Company, 154 U. S. 362, 363.

In the case cited below, the complainant was a mortgage bondholder of the railroad company, whose property was claimed to be exempt under the charter of another railroad, to whose property and immunities the former had succeeded. The point does not seem to have been made that the complainant was without an interest. His interest was assumed as a matter of course.

> Bancroft vs. Wicomico Co. Coms., 121 Fed., 874.

In the case of the Delaware Indians, the purchaser of the land made the point of impairment of the contract.

> New Jersey vs. Wilson, 7 Cranch, 164, 167.

In this case, a lessee made the point that taxes imposed upon the railroad of the lessor were an impairment of the contract contained in the charter of the lessor.

> Ill. Central R. R. vs. Adams, 180 U. S., 28, 35, 36.

In the case of the University of the South, the parties were citizens of the same State, and the jurisdiction of the Federal Court was rested entirely on the point of impairment of the obligation of the contract. The Federal question was decided against the complainant, but this did not affect the jurisdiction of the court.

> Jetton vs. University of South, 208 U. S., 489 (h. n. 1).

Respectfully submitted,

A. R. LAWTON,

T. M. CUNNINGHAM, JR.,

For Appellee.

WRIGHT, COMPTROLLER GENERAL OF GEORGIA, *v.* CENTRAL OF GEORGIA RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

No. 161. Argued January 28, 29, 1915.—Decided March 22, 1915.

This court will not presume that a state legislature in granting a charter containing exemptions would either practice deceit or make a futile grant.

A lessee of railroads which were built under special charters containing irrepealable contracts by which the property was not subject to be taxed higher than a specified per cent on the annual income derived therefrom is not subject to an *ad valorem* tax as the owner of such property.

The statutes of Georgia in regard to the taxation of railroads involved in this action are construed as making the fee exempt from other taxation than that provided for in favor of the lessee as well as of the lessor.

While technical distinctions should be avoided as far as may be in matters of taxation in the interest of substantial justice, they should not be disregarded in order to enable a State to escape from a binding bargain; and so *held* in regard to distinctions between lessors and lessees where the protection of the latter is necessary in order to make good the promise of the State made to the former.

The courts cannot take the place of the taxing power nor can taxes based on ownership of the property be enforced against a lessee of the property under the statutes of Georgia and the leases involved in this case.

206 Fed. Rep. 107, affirmed.

THE facts are stated in the opinion.

Mr. John C. Hart and *Mr. Samuel H. Sibley* for appellant.

The contracts for exemptions are personal, are not vendible nor transferable, and are valid only so long as those companies as such conducted the business of common carriers. The state charter contracts limiting the tax rate is personal to these corporations to whom granted and did not run with the property, not having been transferred to the Central of Georgia Railway with the consent of the State at a time when the State could consent, and cannot be invoked by lessee, for its own benefit.

The person with whom the contract is made by the State may continue to enjoy benefits unmolested as long as he chooses, but there his rights end, and he cannot by any form of conveyance transmit the contract or its benefits to a successor. *Rochester Ry.* v. *Rochester*, 205 U. S. 247; *Morgan* v. *Louisiana*, 93 U. S. 217; *Wilson* v. *Gaines*, 103 U. S. 417; *Louis. & Nash. R. R.* v. *Palmes*, 109 U. S. 244; *Pickard* v. *Tennessee &c.*, 130 U. S. 637; *St. Louis &c. R. R.* v. *Gill*, 150 U. S. 649; *Nor. & West. Railroad Co.* v. *Pendleton*, 156 U. S. 667.

The Constitution of the State forbids exemption. Article 7, § 2, par. 1; *Rochester Ry.* v. *Rochester*, 205 U. S. 247; *Trask* v. *McGuire*, 18 Wall. 391; *Shields* v. *Ohio*, 95 U. S. 319; *Maine Central R. R.* v. *Maine*, 96 U. S. 49; *Railroad*

Co. v. *Georgia*, 98 U. S. 359; *Yazoo R. R.* v. *Adams*, 180 U. S. 1; *Grand Rapids &c. R. R.* v. *Osborn*, 193 U. S. 17; *San Antonio Traction Co.* v. *Altgelt*, 200 U. S. 304.

Whether the exemption claimed is total or a commuted tax rate it stands upon the same principle. *Great Northern Ry.* v. *Minnesota*, 216 U. S. 207.

A lessee in perpetuity is the owner of property for the purpose of taxation. Civ. Code Georgia, 1911, § 1018; *Penick* v. *Atkinson*, 139 Georgia, 649; *Wells* v. *Mayor*, 87 Georgia, 397; *Perry* v. *Norfolk*, 220 U. S. 479; *Cincinnati College* v. *Yeatman*, 30 Oh. St. 276; *Street* v. *Columbus*, 75 Mississippi, 822; *Washington Market Co.* v. *Dist. of Col.*, 4 Mackay, 416.

The lessee, now the appellee, contracted to pay the taxes in question.

Neglect to pay taxes in the past is no reason for future exemption. *Wells* v. *Savannah*, 181 U. S. 547.

Neither the action nor the inaction of the Tax Department could raise an exemption. Art. 4, § 1, par. 1.

Mr. A. R. Lawton and *Mr. T. M. Cunningham, Jr.*, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by the Railway Company, the appellee, to prevent the collection of certain taxes, which, it is alleged, would be contrary to Article I, § 10, and to the Fourteenth Amendment of the Constitution of the United States. The case was heard on bill, demurrer and answer and certain agreed facts, and the District Court issued an injunction as prayed. 206 Fed. Rep. 107. The facts stripped of details not material to the question before us, are as follows: In 1912 the defendant issued executions against the plaintiff to collect *ad valorem* taxes on the "real estate, road bed, and franchise value,

after crediting . . . one-half of one per cent. of the net income, . . . on that portion of its property known in its system" respectively as the Augusta and Savannah Railroad and the Southwestern Railroad. These roads were built under special charters admitted to constitute irrepealable contracts, by which the property was not subject to be taxed higher than one-half of one per cent. upon the annual income—so that it may be assumed that the present taxes could not be sustained if the roads still were in the separate hands of the corporations that built them.

But in 1862, the Augusta and Savannah Railroad and in 1869 the Southwestern Railroad made leases of their respective roads and franchises to the Central Railroad and Banking Company of Georgia during the continuance of the charters of the lessors. In 1892 the property of the lessee went into the hands of a receiver, and the lessors, being allowed an election by the court, elected to allow the property to remain in his hands, which it did until a sale of the same and purchase, under a reorganization plan, by the appellee, the Central of Georgia Railway Company. In 1895 by agreement between the latter and the two lessors the leases were modified so as to run for one hundred and one years from November 1 of that year, renewable in like periods upon the same terms forever. Notwithstanding these leases the State has been content down to this time to collect from the lessors the tax provided for in their charter, but now, conceiving the State and its officers to have been mistaken, the Comptroller seeks to tax the whole property to the lessee.

The executions are for taxes on property of the plaintiff and must show jurisdiction to issue them. *Harris* v. *Smith*, 133 Georgia, 373, 374; *Equitable Building & Loan Ass'n* v. *State*, 115 Georgia, 746. Here the jurisdiction depends upon these roads being in effect the plaintiff's property as matter of law. If they are not, the attempt is an attempt

to tax the plaintiff upon property that it does not own. To decide whether these taxes are such an unjustified exaction we must turn to the legislation of the State, bearing in mind that the practical construction given to the law for nearly half a century is strong evidence that the plaintiff's contention is right. *Wright* v. *Georgia R. R. & Banking Co.*, 216 U. S. 420, 426; *Temple Baptist Church* v. *Georgia Terminal Co.*, 128 Georgia, 669, 680.

The charter of the Augusta and Waynesboro' Rail Road, afterwards the Augusta and Savannah, approved December 31, 1838, alongside of the taxing provision in § 13 to which we have referred, provided as follows in § 16: "That said Company shall at all times have the exclusive use of the said Rail Road, for the transportation or conveyance of merchandise, goods, wares, and freight of every kind, and passengers, over the said Rail Road, so long as they see fit to use this exclusive privilege, and said company shall be authorized to charge the same rates for freight or passage as are allowed in the charter of the Georgia Rail Road and Banking Company: Provided always, that said company may, when they see fit, rent or farm out all or any part of their exclusive right of transportation of freight, or conveyance of passengers, with the privilege, to any individual or individuals, or other company, and for such term as may be agreed upon"—it being added that the Company in the exercise of the right of transportation, or the persons or company "so renting from said company . . . shall, so far as they act on the same, be regarded as common carriers." (Laws of 1838, p. 174, at p. 179.)

It will be perceived that when this section was drawn it was supposed that different persons might be allowed to put their carriages upon the new form of road, as perhaps may be seen even more clearly in other early charters in Georgia and elsewhere. And the revenue that was to be derived from the exclusive privilege granted might be

obtained by doing the whole business, by letting in others to share a part of it, or by making a lease of the whole. Any one of the three courses is permitted, one deemed as likely as another, and also so far as appears, all standing alike in the mind of the legislature in respect of any legal effect upon the other grant of rights.

The foregoing view of § 16 would lead us to believe that no change in the matter of tax exemption was expected to follow from the demise of the road, any more than it would have followed from the admission of another carrier to partial rights, or of an individual to carry his own goods. But that is only an introduction to further considerations. We cannot suppose that the Legislature meant either to practice a cunning deception or to make a futile grant. Therefore, we are unable to read the charter as making the exemption vain by reserving to the State an unlimited right to impose upon the lessee all that it had renounced as against the lessor. For that was to give notice to the parties, if they were supposed to know the law, that the exemption would be lost if the income was earned in one of the contemplated ways—or, if they were supposed ignorant, was to invite them to a bargain that was to have an unexpected and disastrous result.

After the charter came a special act of January 22, 1852 (Laws of 1852, p. 119), which authorized the Central Railroad and Banking Company "to lease and work for such time and on such terms as may be agreed on by the parties interested," the two roads with which we are concerned, among others, and reciprocally giving power to the corporations owning those roads "so to lease to the Central Railroad and Banking Company of Georgia their respective Railroads for such term of time and on such other terms as they respectively may deem best." In the interval the Rail Road had become a Railroad—but we see no ground for believing that there has been any change in the attitude of the State toward the pioneer enterprises

in taxing the leased property, the tax was placed upon the only use to which the property could be put in order that it might be made of benefit to the University. Indeed, it was said that the assessment under the legislative act destroyed the value of the exemption; that is, that it was necessary to protect the lessee in order to save the contract right. But this court overruled these contentions. It was thought to be 'plain that an exemption granted to the owner of the land in fee does not extend to an exemption from taxation of an interest in the same land, granted by the owner of the fee to another person as a lessee for a term of years.' The immunity of the one gave no immunity to the other, and the contract of exemption did not imply 'in the most remote degree' that the State would not thereafter 'so change its mode of assessment as to reach the interest of a lessee directly.' The State taxed what it had a right to tax, the lessee's interest, even though it could not tax the University. The exemption, said the court, 'lasts only so long as the university owns the lands, and when it conveys a certain interest in them to a third person it no longer owns that interest, which at once becomes subject to the right of the State to tax it.' In the present case, it may be assumed that, what the appellee has, it has acquired lawfully, but it cannot claim to be immune from taxation or plead the contract of another.

I emphasize this, for it seems to me that its full recognition is important to a proper determination of the case, and that what is denied to the appellee under the contract clause should not be asserted and permitted to have a dominating effect under another name. Nor would there be any basis for an imputation of unfair dealing or sharp practice, in case a State undertakes to tax the property of a company which itself has no immunity from taxation, simply because its grantor had an immunity which it was not able to transfer. The appellee says in

its argument that it 'is not claiming any tax exemptions,' and, as in fact it appears to have none, we should deal with the case upon this footing.

What then is the relation of the appellee to the property in question? Its predecessor, the Central Railroad & Banking Company of Georgia, had leased the railroad properties of the Augusta & Savannah and Southwestern companies, respectively, in perpetuity, or during the entire existence of the lessor companies. The property of the Central Railroad & Banking Company of Georgia was sold under foreclosure in 1895, and the appellee was organized as a successor corporation and leases to it of the railroad properties in question were executed by both the original companies 'for the full term of one hundred and one years, and renewable in like periods upon the same terms forever.' The rental in each case was the fixed sum of five per cent. on the amount of the capital stock then outstanding, that is to say, the sum of $51,145 in the case of the Augusta & Savannah Company and $259,555 in the case of the Southwestern Company. In short, under what is termed a lease the appellee took the entire property to hold, if it pleased, in perpetuity, subject to an annual charge of the amounts specified.

Dealing with the substance of things, as we must when the Constitution of the United States is involved—and not with mere forms or names—I am unable to see how an *ad valorem* tax against the appellee upon the property which it thus holds is a violation of due process of law under the Fourteenth Amendment. Under a system which tolerates such incongruities as the taxing of the entire value of the land to the owner of the equity of redemption, while the interest of the mortgagee is separately taxed, it would seem to be difficult to find ground for a constitutional objection to the treatment of the holder of a perpetual lease as virtual owner. See *J. W. Perry Co.* v. *Norfolk*, 220 U. S. 472, 478. In the language of Mr. Chief

Justice Bleckley in *Wells* v. *Savannah*, 87 Georgia, 397, 399 (see 181 U. S. 531, 544, 545): "The value of property consists in its use, and he who owns the use forever, though it be on condition subsequent, is the true owner of the property for the time being. This holds equally of a city lot or of all the land in the world. Where taxation is *ad valorem*, values are the ultimate objects of taxation, and they to whom the values belong should pay the taxes. Land sold or by a contract of bargain and sale demised forever subject to a perpetual rent, is taxable as corporeal property; and in private hands the rent also is taxable as an incorporeal hereditament. The tax on the former is chargeable to the purchaser or perpetual tenant, and on the latter to the owner of the rent." It can hardly be said that it makes a constitutional difference that a so-called lessee, who may enjoy forever if it chooses, has also the privilege of giving up the property at the renewal dates. Nor do I understand it to be important, under the Federal Constitution, how the interest of the appellee—which in substance is ownership—is technically described. Surely, the Fourteenth Amendment is not concerned with mere technicalities of tenure; these, the State is free to abolish. And it should be added that we do not have here any question of double taxation, as the State has credited to the appellee against the tax demanded the one-half of one per cent., upon the net income, which was payable by the original companies and the payment of which the appellee had assumed.

In considering the constitutional capacity of the State, we are dealing of course with the question as to what it may do by the exercise of all the power it possesses, and not merely with the interpretation of its existing statutes. *Castillo* v. *McConnico*, 168 U. S. 674, 683. I recognize fully the difficulties in this case, so far as it has to do with the interpretation and application of the Georgia tax laws. And if it were the decision of the court as a mere matter of

construction of the local law—in the absence of a controlling local decision—that the statutes of Georgia did not justify the assessment actually made, I should withhold this expression of dissent; for that would leave the matter, as I conceive it should be left, within the control of the courts and legislature of the State, so far as the mere imposition of an *ad valorem* tax upon the property held and enjoyed by the appellee is concerned.

But I am unable to concur in the view that the tax here sought to be collected violates the Constitution of the United States.

I am authorized to say that MR. JUSTICE PITNEY concurs in this dissent.

MR. JUSTICE MCREYNOLDS also dissents.